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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JAMES W. FEENEY,

Petitioner,

-against

UNITED STATES OF AMERICA,

Respondent

On Writ of Certiorari to
the United States Court of
Appeals for the Second Circuit.

THE PETITION

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Appendix

I. QUESTIONS PRESENTED FOR REVIEW

1. Should the "same transaction" test be applied in Feeney's case to determine whether he was twice placed in jeopardy.

2. Should the United States Attorney's office of the Southern District of New York be required to adhere to the written agreement between Feeney and the Eastern District of New York.

In the alternative, did an oral agreement exist between Feeney and the United States Attorney's office of the Southern District of New York.

3. Was this Agreement violated by the Southern District of New York.

II. TABLE OF AUTHORITIES

Ashe v. Swenson, 397 U.S. 436 (1970) - 9, 10, 13, 14, 16, 17

Blockburger v. United States, 284 U.S. 299 (1932) - 14, 15

Green v. United States, 355 U.S. 184 - 14

Morey V. Commonwealth, 108 Mass. 433 (1871) - 15

Santobello V. New York, 404 U.S. 257 (1971) - 21, 22

United States v. Cioffi, 487 F. 2d 492 (2nd Circ. 1973)- 15,16

United States v. Garner, 529 F. 2d 962 (6th Circ. 1976)- 15,17

United States v. Martin, 480 F. Supp. 880 - 20

United States v. Phillips Petroleum Co., 435 F. Supp. 622 (1977) - 20,21

18 U.S.C. 371 - 3,8

Fifth Amendment, United States Constitution - 2

18 U.S.C. 1014 - 2,3,9,18

18 U.S.C. 1341 - 2, 4, 9

18 U.S.C. 1343 - 2, 4, 8, 9

18 U.S.C. 2314 - 4, 5, 8

Rule 11 (e), Federal Rules Criminal Procedure - 5,6,7

III. REFERENCE TO REPORTS OF COURTS BELOW

1. United States v. Kevin Krown, Maurice Benjamin, James Feeney, Henry Rosten, Roger Rosen, and Anthony Constanzo, U.S.

District Court. SDNY, 80 Cr. 673, judgment of conviction rendered on May 19, 1981.

2. United States of America v. Kevin Krown, Maurice Benjamin, James Feeney, Henry Roster, Roger Rosen, and Anthony Constanzo, United States Court of Appeals, Second Circuit, affirming the convictions, except as to certain of the counts against two other co-defendants filed April 1, 1982, Number 81-1192.

3. United States v. Kevin Krown, et al, United States Court of Appeals, denying petitions for a rehearing, filed June 16, 1982, Number 81-1192.

IV. JURISDICTION

Petitioner, James W. Feeney, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, decided and filed on April 1, 1982, affirming a judgment of the United States District Court for the Southern District of New York convicting Petitioner of mail, wire and bank fraud in violation of Title 18, U.S.C. Sections 1014, 1341 and 1343.

Petition for rehearing containing suggestions that there should be a rehearing in banc was denied and filed on June 16, 1982.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1) and Rules 17, 20 and 21 of the Supreme Court Rules.

V. CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Fifth Amendment, United States Constitution -

> No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness

against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

2. 18 U.S.C. 371 -

§371. Conspiracy to commit offense of to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

3. 18 U.S.C. 1014 -

§1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any Federal intermediate credit bank, or any division, officer, or employee thereof, or any corporation organized under sections 1131-1134m of Title 12, or of any regional agricultural credit corporation established pursuant to law, or of the National Agricultural Credit Corporation, a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association, a Federal land bank, a joint-stock land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, any member of the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the Administrator of the National Credit Union Administration upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan or any change or extension of any of the same, by renewal deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall

be fined not more than $5,000 or imprisoned not more than two years or both.

4. 18 U.S.C. 1341 -

§1341. Frauds and Swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

5. 18 U.S.C. 1343 -

§1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

6. 18 U.S.C. 2314 -

§2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports

or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof -

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

7. Rule 11 (e), Federal Rules of Criminal Procedure -

Rule 11. Pleas

(e) Plea agreement procedure.

(1) In general. The attorney for the government and the attorney for the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

(A) move for dismissal of other charges, or
(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or
(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

(2) Notice of such agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e) (1) (A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e) (1) (B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea.

(3) Acceptance of a plea agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of a plea agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Time of plea agreement procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of pleas, plea discussions, and related statements. Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) a plea of guilty which was later withdrawn;
(B) a plea of nolo contendere;
(C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or
(D) any statement made in the course of plea discussions with an attorney for the government which do not result in a plea of guilty or which result in a plea of guilty, later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the

course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

VI. STATEMENT OF THE CASE

The United States District Court for the Southern District of New York obtained jurisdiction over Feeney, when he was indicted, in October 1980, for acts in violation of criminal statutes of the United States.

This case involves three federal districts: the Southern District of New York (SDNY), the Eastern District of New York (EDNY), and the District of Colorado (D of Colo).

In 1978 and 1979, Feeney was in the process of being prosecuted for criminal acts in the EDNY,78 Cr 346 (EDNY). During those proceedings, and on September 22, 1978, Feeney entered into an agreement with the EDNY, Appendix A[1],pursuant to Rule 11 (e), Federal Rules of Criminal Procedure. The Agreement required Feeney to cooperate with United States Attorney's office in the EDNY, and, with agents of the Federal Bureau of Investigation, and other law enforcement agencies. The Agreement recited other obligations accepted by Feeney. These obligations were sometimes vague - and given Feeney's knowledge and personal contacts - always exceedingly broad and far-reaching in scope.

The Agreement caused Feeney to cooperate, often in a undercover role, in the EDNY and the SDNY with criminal investigations being conducted. These investigations, in part, focused on various reputed criminals engaged in fraudulent banking practices using sham banks established in the off-shore islands. Two of these banks were the First London Bank and Trust Company, Limited (FLBT), and the First National Bank of Teheran, S.A.K., Limited (FNBT). These banks were instruments in perpetrating frauds on victims in New York, Colorado, and other states. The investigation

[1]Hereafter referred to as the "Agreement".

also focused on an effort to cause the return to the United States of the notorious fugitive, Robert Vesco. Still another major investigation dealt with the uncovering of the Libyan plane sale scandal during the Carter Administration.

Although the Agreement was between Feeney and the EDNY, Feeney began his cooperation with the SDNY prior to the fulfillment of its terms on the part of the EDNY. During this time, the SDNY was clearly aware of the Agreement and understood it to be the basis of Feeney's cooperation with the SDNY. See Transcript of December 27, 1979, 78 CR 356 (EDNY)[2], pages 3 - 8, Appendix B.

Once the EDNY fulfilled its part of the Agreement, see TR 12/27/79, 3 - 8, Feeney continued his cooperation with the SDNY. In all of these cooperative efforts, Feeney spent thousands of dollars of his personal wealth, and placed his life in jeopardy. TR 12/27/79, 7. Unfortunately, Feeney's usefulness as an undercover informer rapidly diminished in late 1979 when his undercover role became known in some, as yet, undetermined manner. It was at this time - in the last days of 1979 - the prosecution of Feeney concerning 78 CR 356 (EDNY) proceeded to a conclusion. See TR 12/27/79.

However, on March 18, 1980, Feeney was indicted in the District of Colorado. 80 CR 54 (D of Colo),Appendix C. The counts included conspiracy to defraud in violation of 18 U.S.C. 371, 1343, and 2314. (The charges dealt with Feeney's acts which came within the time span of his cooperation with the SDNY investigations.) Feeney was joined with six other defendants, among them being one Kevin Krown. All were convicted as charged by a jury at the trial which commenced on June 30, 1980.

Then, in October, 1980, Feeney was indicted in the SDNY for alleged criminal acts which took place between June 1978

[2]Hereafter referred to as TR 12/27/79 followed by the appropriate page number(s).

8

and October 1978, 80 Cr 673 (SDNY), Appendix D, in violation of 18 U.S.C. 1014, 1341, 1343. There were five other defendants joined with Feeney, among them being Kevin Barry Krown. As in 80 CR 54 (D of Colo), this indictment dealt with Feeney's acts which came under the time span of his cooperation with the SDNY investigations.

In 880 CR 673 (SDNY), as to all co-defendants, there were a total of fifty-five counts dealing with mail, wire, and bank fraud. The fifty-sixth count alleged a conspiracy. Feeney and Krown, while named as co-conspirators, were not defendants in this conspiracy count. At the ensuing trial the questions which are the basis of this Petition were timely raised. See, for example, Transcript of February 2, 1981 80 Cr 673, pages 18 - 21, Appendix E.

After a trial by jury, a judgment of conviction was rendered, May 19, 1981, on all counts.

VII. REASONS FOR GRANTING THE WRIT

A. Feeney was twice placed in jeopardy.

Whether the prosecution of alleged criminal acts of an individual constitutes a violation of the constitutional mandate against double jeopardy is a recurring issue in American courts of law. Over the years, the Court has enunciated a number of rules to give guidance to the lower courts when they are called upon to decide the applicability of double jeopardy to a given set of facts. One of those rules - collateral estoppel - was affirmed by the Court in Ashe v. Swenson, 397 U.S. 436 (1970: "....when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit...." Ashe v. Swenson, supra, at 443. Given the facts as they exist in Ashe, the petitioner applauds the application of collateral estoppel. Also, petitioner agrees with the analysis of the Ashe Court when

it said:

> In more recent times, with the advent of specificity in draftsmanship and the extraordinary proliferation of overlapping and related statutory offenses, it became possible for prosecutors to spin out a startingly numerous series of offenses from a single alleged criminal transaction. As the number of statutory offenses multiplied, the potential for unfair and abusive reprosecutions became far more pronounced. The federal courts soon recognized the need to prevent such abuses through the doctrine of collateral estoppel, and it became a safeguard firmly embedded in federal law....
>
> Ashe v. Swenson, supra at 445, footnote 10 (citations omitted).

However, it is this very analysis when applied to the Feeney facts which compels petitioner to assert that the doctrine of collateral estoppel does not go far enough. That is, Feeney should have received the protection provided by the Double Jeopardy Clause, but did not; collateral estoppel does not apply; nor do other rules which have emerged in clarification of the double jeopardy guarantee. And so to date Feeney has become a victim of prosecutions for a "startingly numerous series of offenses from a single alleged criminal transaction." Id.

This begins to become evident in an analysis of 80 CR 54, the Colorado indictment, Appendix C, and 80 CR 673, the SDNY indictment, Appendix D. Throughout both indictments there is clear evidence of prosecutorial awareness that the conspiracy, schemes, and other criminal activities encompassed an area much larger than either District, and that the activities overlapped both Colorado and New York.

For example, page 1 of 80 CR 54 (D of Colo), Appendix C, states, "From on or about December 30, 1977, and continuously thereafter up to and including the present in the State and District of Colorado and elsewhere.... and....from the State of New York and from St. Vincent, British West Indies banks to the State of Colorado", and on pages 2, 3 ¶ (e) ".... defendants.... on various occasions would and did meet in New York City, New York, and did discuss and exchange checking items...." Other examples

are found on page 6, ¶¶ 5., 6., and 7. wherein the activities of Feeney and others in and from New York City are recounted.

There are numerous other examples to be found in the 80 CR 54 (D of Colo). Prosecutorial awareness of the scope of the conspiracy and criminal schemes are also abundant in 80 CR 673 (SDNY), Appendix D. For example, on page 1 of 80 CR 673: "From in and around November, 1977 up to and including on or about December 31, 1978, in the Southern District of New York and elsewhere...." (emphasis added); ¶4: "....Said banks also maintained offices and did business at various addresses in Manhattan in the Southern District of New York, and elsewhere." (emphasis added). There are many other examples throughout 80 CR 673 of prosecutorial awareness of the large territorial scope of the alleged criminal acts.

Both indictments show clear prosecutorial awareness that Feeney was involved with many over-lapping co-conspirators and co-schemers. The effect of this becomes evident when it is noticed that, while he was a defendant in the Colorado trial as a co-conspirator, along with Kevin Barry Krown, he was merely named as a co-conspirator, along with Krown, but not a defendant in the SDNY trial.

Even more importantly both indictments show they deal with separate acts in a single transaction. For example, 80 CR 673 (SDNY), Appendix D, provides an overview of the scheme of the co-defendants:

> ...., the defendants and their co-schemers fraudulently represented that various fraudulent off-shore banks with which they were associated, were substantial and bona fide banks ...., including commercial lending, the issuance of legitimate and valuable letters of credit, official checks, certified checks, certificates of deposit and cashiers checks, and the maintenance of personal and corporate checking accounts, when, in fact, ... these off-shore banks had no assets and could not perform any such services. These off-shore banks included the First London Bank and Trust Co. ("FLBT"), and the First National Bank of Teheran, S.A.K. ("FNBT") (hereinafter "off-

> shore banks"). .... One of the principal means used by the defendants was to induce certain victims who were in need of financial assistance to pay . . . . "advance fees" or "front money," on the basis of false and fraudulent representations that said off-shore banks would loan them funds .... or would assist said victims in procuring financing from other sources. The loans would be in the form of cashiers checks, letters of credit, certificates of deposit, certified checks and official checks issued by the off-shore banks, or checks written on personal or corporate checking accounts which the off-shore banks would allegedly open and maintain in the victim's name (hereinafter collectively referred to as "financial instruments"). Another means employed .... was to purchase and attempt to purchase goods and services from certain other victims with worthless checks issued by or drawn on the off-shore banks. Yet another means .... was to present and cause to be presented to legitimate domestic banks in the Southern District of New York and elsewhere checks issued by or drawn on the off-shore banks, for payment, deposit, credit and collection, ... The defendants and their co-schemers further falsely represented that the aforementioned financial instruments were worth their face amount and would be honored by the issuing off-shore bank, when in fact, ... said financial instruments were worthless and would not be honored by the off-shore banks or by the defendants and their co schemers.

In the District of Colorado indictment, 80 CR 54, Appendix C, the conspiracy count nexus revolves around the activities of the co-defendants, the victims, and various off-shore banks established by the co-defendants. Among these off-shore banks are included the First London Bank and Trust Company, Limited (FLBT), and the First National Bank of Teheran, S.A.K., Limited (FNBT), the very same banks so critical in the SDNY indictment; and the very same banks in each of the counts against Feeney in the District of Colorado indictment. 80 CR 673 and 80 CR 54 deal with the same scheme, the same kinds of alleged criminal acts, and in the case of Feeney and Krown, the same indicted co-defendants.

It is in this context that Feeney brings his claim of double jeopardy. Admittedly, Feeney cannot claim that the federal government should be collaterally estopped from a successful

prosecution in the SDNY along the lines of Ashe v. Swenson, supra. But that is not to say that "with the advent of specificity in draftsmanship and the extraordinary proliferation of overlapping and related statutory offenses," Ashe v. Swenson, supra, at 455, footnote 10, Feeney is not a victim of a startling series of offenses arising from a single criminal transaction. Rather, in the circumstances of the Feeney case, he is a person who was "subject for the same offense to be twice put in jeopardy of life or limb." Amend. 5, U.S. Const.

> This guarantee is expressed as a prohibition against multiple prosecutions for the "same offence." Although the phrase "same offence" appeared in most of the early common-law articulations of the double-jeopardy principle, questions of its precise meaning rarely arose prior to the 18th century, and by the time the Bill of Rights was adopted it had not been authoritatively defined.
>
> When the common law did finally attempt a definition, it adopted the "same evidence" test, which provided little protection from multiple prosecution:
>
> "[U]nless the first indictment were such as the prisoner might have been convicted upon by proof of the facts contained in the second indictment, an acquittal on the first indictment can be no bar to the second."
>
> The "same evidence" test of "same offence" was soon followed by a majority of American jurisdictions, but its deficiencies are obvious. It does not enforce but virtually annuls the constitutional guarantee. For example, where a single criminal episode involves several victims, under the "same evidence" test a separate prosecution may be brought as to each. The "same evidence" test permits multiple prosecutions where a single transaction is divisible into chronologically discrete crimes. Even a single criminal act may lead to multiple prosecutions if it is viewed from the perspectives of different statutes. Given the tendency of modern criminal legislation to divide the phrases of criminal transaction into numerous separate crimes, the opportunities for multiple prosecutions for an essentially unitary criminal episode are frightening. And given our tradition of virtually unreviewable prosecutorial discretion concerning the initiation and scope of a criminal prosecution, the potentialities for abuse inherent in the "same evidence" test are simply intolerable.

Ashe v. Swenson, supra, Concurring opinion of Justice Brennan, joined by Justices Douglas and Marshall, at 451, 452 (footnotes and citations omitted).

That there is this potentiality for abuse is explicitly recognized. For example, in Green V. United States, 355 U.S. 184, 187, the Supreme Court has said that the underlying idea of the double jeopardy clause is "....that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity....".

It is true that the Court has adhered to the strictures of the "same evidence" test to determine whether a court, in a case such as Feeney's, is dealing with two offerses or only one. See Blockburger v. United States, 284 U.S. 299 (1932). However, there are substantial reasons why the "same evidence" test is not adequate to provide the kinds of protection implicit in the Double Jeopardy Clause.

Mr. Justice Brennan, in his concurring opinion in Ashe v. Swenson, supra, at 453, 454, examined the historical basis of the same evidence test:

> The "same evidence" test is not constitutionally required. It was first expounded after the adoption of the Fifth Amendment, and, as shown in Abbate v. United States, supra, 359 U.S. at 197-198 and n. 2, 79 S.Ct. 666, 671-673, has never been squarely held by this Court to be the required construction of the constitutional phrase "same offence" in a case involving multiple trials. .... The "same evidence" test may once have been defensible at English common law, which, for reasons peculiar to English criminal procedure, severely restricted the power of prosecutors to combine several charges in a single trial. In vivid contrast, American criminal procedure generally allows a prosecutor freedom, subject to judicial control, to prosecute a person at one trial for all the crimes arising out of a single criminal transaction. (footnotes omitted)

Furthermore, the Sixth Circuit, in United States v. Garner, 529 F. 2d 962 (6th Circ. 1976), although it noted the requirements of stare decisis and the law of the case, recognized the burdens placed upon defendants by multiplicitous prosecutions and sentences which stem from the same evidence test.

Also, in United States v. Cioffi, 487 F. 2d 492 (2nd Circ. 1973), the court noted that although the "same evidence" rule as stated in Morey v. Commonwealth, 108 Mass. 433 (1871) and more recently in Blockburger v. U.S., supra, 304, has never been expressly rejected by the Supreme Court or the Second Circuit, it has been subject to serious criticism. United States v. Cioffi, supra, 496.

The Court continued:

> "Moreover, the Supreme Court has rather conspicuously refrained from employing the Morey formulation in recent cases. .... In the last two cases, Petite v. U.S., 361 U.S. 529, 80 S. Ct. 450, 4 L. Ed. 2d 490 (1960), and Marakar v. U.S., 370 U.S., 723, 82 S. Ct. 1573, 8 L. Ed. 2d 803 (1962), the Government has avoided testing the continued validity of the traditional formulation by requesting the dismissal of convictions that might have called for reconsideration of the Morey rule. The Government there insisted that its requests for dismissals were based, not on a violation of double jeopardy principles, but on its own policy 'that several offenses arising out of a single transaction should be alleged and tried together and should not be made the basis of multiple prosecutions, a policy dictated by considerations both of fairness to defendants and of efficient and orderly law enforcement', ... In both Petite and Marakar, three Justices would have rejected the Government's 'policy of fairness' approach and would have based reversal directly on the Double Jeopardy clause. In U.S. v. Sabella, 272 F. 2d 206, 211 (2 Cir. 1959) we held that the Double Jeopardy clause prohibited a second prosecution after a conviction stemming from the same narcotics sale. Although this court there affirmed the Morey doctrine, we refused to extend it to the point of rigid formalism. While the two charged offenses in Sabella each technically included one unique element, the Government was not required to prove either in order to make out a primae facie case. In effect, then, the same proof could support both convictions. In view of the shadow that has

been cast over Morey, one is justified in speculating that, unless prosecutors take to heart the recommendations for joinder of all offenses arising out of the same criminal episode or transaction, double jeopardy will be a fertile ground for Supreme Court development in the next decade".

United States V. Cioffi, supra, 496-98 (citations and footnotes omitted).

In Ashe, Justice Brennan, in his concurring opinion, stated:

....the Double Jeopardy Clause requires the prosecution except in most limited circumstances, to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction. This "same transaction" test of "same offence" not only enforces the ancient prohibition against vexatious multiple prosecutions embodied in the Double Jeopardy Clause, but responds as well to the increasingly widespread recognition that the consolidation in one lawsuit of all issues arising out of a single transaction or occurrence best promotes justice, economy and convenience. Modern rules of criminal and civil procedure reflect this recognition. Although in 1935 the American Law Institute adopted the "same evidence" test, it has since replaced it with the "same transaction" test. England too, has abandoned its surviving rules against joinder of charges and has adopted the "same transaction" test.

Ashe v. Swenson, supra, 454, 455 (footnotes and citations omitted).

Feeney is not asserting that the federal government could not bring him to trial in the SDNY under any circumstances. Rather, Feeney states that he should not have been brought to trial in the SDNY under the circumstances which prevailed in that case. That is, at the time of the Colorado indictment, Feeney was under investigation for the same transaction in the SDNY and an indictment was being readied in the SDNY for his activities in that transaction. The federal prosecutorial authorities were aware of the pending Colorado indictment.

Under such circumstances, Petitioner recalls the words of Justice Brennan:

> ".... the consolidation in one lawsuit of all issues arising out of a single transaction or occurrence best promotes justice, economy, and convenience. Modern rules of criminal and civil procedure reflect this recognition .... The Federal Rules of Criminal Procedure liberally encourage the joining of parties and charges in a single trial. .... These rules (Rules 8 (a), (b), and 13 of the Fed. Rules of Criminal Procedure) represent considered modern thought concerning the proper structuring of criminal litigation.
>
> Ashe v. Swenson, supra, 454, (footnotes omitted).

Also, The Sixth Circuit has drawn a conclusion similar to Justice Brennan's.

> (W)e note that in most circumstances compulsory joinder is the only sensible solution to the problem of avoiding a multiplicity of prosecutions arising when a number of statutory provisons are violated by a particular defendant during one criminal episode. A rule of compulsory joinder would conserve judicial resources.
>
> . . . .
>
> ....Although we are unwilling to find that joinder is constitutionally required, we question the wisdom of initiating two separate criminal prosecutions in this case in different jurisdictions.
>
> United States v. Garner, supra, 971, 972.

Petitioner recognizes that, in cases similar to Feeney's, if the "same transaction" test is applied, and if compulsory joinder is required of all known criminal acts at the time that an indictment issues, a burden would be placed on the federal prosecutorial authorities throughout the nation. However, when one weighs the developing conveniences and speed of modern communications and computerization against the interests of justice, judicial economy, and the protection of the rights of defendants, see Green v. United States, supra, that burden does not appear heavy.

Consequently, Feeney asks the Court to find that his prosecution in the SDNY stemmed from the same transaction which led

to his judgment of conviction in the District of Colorado; and that, since the charges in the SDNY indictment which should have been joined in the first indictment were not so joined, the judgment of conviction in the SDNY should be reversed and the indictment dismissed.

B. The SDNY Violated a Plea Agreement with Feeney.

In 1978 prior to his trials in the District of Colorado and the Southern District of New York (SDNY), Feeney was involved in criminal proceeding[3] in the Eastern District of New York (EDNY). On September 22, 1978, and during that proceeding, Feeney and the United States Attorney for the EDNY entered into an Agreement, pursuant to Rule 11 (e), Rules of Criminal Procedure, Appendix A. The Agreement envisaged a cooperation in an investigation of criminal matters that knew neither political boundaries, nor parameters in a continuum of time, and was only limited by the extent of Feeney's knowledge and good faith cooperation.

In exchange for this cooperation, Feeney received two promises. The first was that he would be permitted to plead guilty to an information containing one count of a violation of 18 U.S.C. 1014. The second promise stated:

> This office, prior to James W. Feeney's sentencing, will advise the sentencing court of the nature and extent of his cooperation including its investigative and prosecutive value, truthfulness, completeness and accuracy. In this connection, it is understood that this office's determination of the value, truthfulness, completeness and accuracy of this cooperation shall be binding upon the defendant and its statement to the sentencing court may be made either orally or in writing. However, this office will make no specific recommendations with respect to sentencing. This office makes no representations to James W. Feeney concerning any sentence that may be imposed upon the aforementioned plea of guilty, such matters being solely within the province of the sentencing court.
>
> (emphasis added)

[3] 78 CR 356 (EDNY)

In giving effect to this Agreement, the record of the EDNY proceedings shows that both parties performed their respective duties in good faith. See Proceedings of December 27, 1979, 78 CR 356 (EDNY), Appendix B.

Prior to sentencing on 78 CR 356 (EDNY), the court conducted an in camera discussion among members of the United States Attorney Offices of the EDNY and the SDNY, Appendix B. At that meeting, it was established that Feeney had cooperated in a laudatory manner with the SDNY in highly sensitive investigations at considerable personal risk and expense. Proceedings of December 27, 1979, 3-8, Appendix B.

However, ten months later, Feeney was indicted in the SDNY for alleged criminal acts occurring between June and October, 1978. These acts stemmed from the very same investigations in which he had cooperated with the SDNY. The SDNY claims that Feeney's cooperation in its investigations imposed no duty on the SDNY; no agreement existed between them.

Feeney asserts that there was an agreement, and that the SDNY violated it. The agreement came into existence by the very nature of his September 22, 1978 Agreement with the EDNY and the participation of the SDNY in the fruits of that Agreement. Or, in the alternative, the Agreement was formed in an oral understanding between Feeney and the SDNY.

A clear indication of the existence of the SDNY Agreement is contained in the Proceeding of December 27, 1979, at page 5, Appendix B, when AUSA Sear of the SDNY stated:

> The Government gave Mr. Feeney no assurance whatsoever as to any immunity or anything else, other than that we would certainly consider and we welcomed his cooperation in what we considered a very important investigation.
>
> (emphasis added)

The parameters of the SDNY agreement with Feeney takes clearer shape when one examines the October 1 and 2, 1980 transcript of the proceedings in the District of Colorado,

United States v. Krown, et al, Criminal Action No. 80 CR 54.[4] At those proceedings, Raymond Levites, an AUSA for the SDNY, and Investigator Thomas Doonan testified. AUSA Levites had been involved in the off-shore bank investigation, including Feeney as a subject. As late as January 15, 1980, AUSA Levites had accompanied Investigator Doonan in a debriefing interview of Feeney. Consequently, AUSA Levites was aware of Feeney's co-operation with the government, and his criminal exposure up to that time, when, in the October 10,1980 Proceedings, 179-180, AUSA Levites clearly states that the SDNY had an obligation toward Feeney.

> "Certainly, Mr. Feeney was a party to many transactions in this case which, had he not been associated with us, he might conceivably had -- he was involved with people and transactions which are the current subjects of an ongoing investigations, and if those transactions had been found to be criminal, Mr. Feeney, in the normal course, would have been subject to prosecution for his participation in those transactions had he not been working with us in that regard."
>
> (emphasis added)

The Government should not be heard to argue that the SDNY Agreement speaks for itself: in effect, EDNY was able to direct Feeney's activity in any manner desired under the terms of the Agreement, and that the SDNY, through some process of subrogation, stepped into the "shoes" of the EDNY and enjoyed every benefit of the Agreement without incurring any obligation toward Feeney.

Furthermore, the Government should not be heard to argue that there was never a written agreement between the SDNY and Feeney and, consequently, no agreement could have existed.

"When the United States Government gives its word to or makes an agreement with one of its citizens, the Government must be held to that agreement and keep its promises." United States v. Martin, 480 F. Supp. 880, 882, quoting from United States v.

[4]hereafter referred to as the October 1 or 2, 1980 Proceedings, as appropriate.

Phillips Petroleum Co., 435 F. Supp. 622 (N.D. Okl. 1977) at 640. The Martin Court went on to say:

> In the analysis of agreements such as these, the principles of contract law are used to determine whether a binding agreement has in fact been made. The prerequisites to a legally binding agreement are satisfied when one party makes an offer and the party to whom the offer is made accepts. An "offer" is defined as a promise upon an act, forebearance or return promise being given in exchange for the promise, or its performance. The essence of any agreement is mutual assent and the existence of assent can only be reconstructed through evidence of words or deeds which objectively manifest the expression of assent.
>
> United States v. Martin, supra, 883 (citations omitted)

The existence of this agreement makes Feeney's cooperation with the SDNY comprehensible. Certainly, Feeney did not cooperate with the Government to earn the diatribe contained in the Government's sentencing Memorandum. 80 CR 672, in the SDNY prosecution. Nor did he cooperate in late 1978 and throughout 1979 in the SDNY to earn a prosecution by the SDNY of acts committed between June and November, 1978.

Admittedly, the consideration due Feeney is difficult to ascertain. Certainly, it is more than nothing. Probably, it was something less than transactional immunity. But the fact is, Feeney got nothing in return.

A breach of a plea agreement as was the case here, is grounds for setting aside a verdict. In Santobello v. New York, 404 U.S. 257 (1971), the Supreme Court held that where a prosecutor had agreed at the time of a plea to make no recommendation as to sentence and at the time of sentence another prosecutor recommended that the maximum one-year sentence be imposed, the original agreement was controlling and the defendant was entitled to rely on it. Justice Burger in expressing the unanimous view of the Court, held that although plea bargaining was an essential component of the administration of justice,

to be encouraged when properly administered, it must be attended by safeguards, that when a guilty plea rested in significant degree on a promise of the prosecutor, so that it could be said to be part of the inducement, such promise must be fulfilled, and that the state court's affirmance of the conviction was improper, it being immaterial that the breach of agreement by the prosecution was inadvertent. Justice Burger admonished: "The staff lawyers in a prosecutor's office have the burden of "letting the left hand know what the right hand is doing or has done". See Santobello, supra at 257. See also, United States v. Papa, 533 F. 2d 815 (1976).

VII. CONCLUSION

Because of the importance of the questions presented for review, Petitioner respectfully requests the Court to grant this Petition.

DATED: August 10, 1982

Thomas F. Licitti

THOMAS F. LICTTI
Attorney for Petitioner
507 Westbury Avenue
Carle Place, New York 11514
(516) 334-6409

APPENDIX

Contents

1. United States v. Kevin Krown, et al, United States Court of Appeals For the Second Circuit, Docket Number 81-1192, decided on April 1, 1982.

2. United States v. Kevin Krown et al, United States Court of Appeals For the Second Circuit, Docket No. 81-1192, Order denying petition for rehearing. Filed June 16, 1982.

A. Letter dated September 22, 1978. Agreement between The United States Attorney, Eastern District of New York (EDNY) and James Feeney.

B. Transcript of December 27, 1979, 78 CR 356 (EDNY).

C. United States v. Kevin Krown, et al, Superseding Indictment, 80 CR 54 (Dist. of Colo.).

D. United States v. Kevin Krown, et al, Indictment, 80 CR 673 (SDNY).

E. Transcript of February 2, 1981, 80 CR 673 (SDNY).

on file in Clerk's Office

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 278, 279, 280, 281, 282, 370, 371—August Term, 1981

(Argued: October 27, 1981 Decided: April 1, 1982)

Docket Nos. 81-1192, 1195, 1196, 1197, 1203, 1204, 1254

UNITED STATES OF AMERICA,

Appellee,

—against—

KEVIN KROWN, MAURICE BENJAMIN, JAMES FEENEY, HENRY ROSTEN, ROGER ROSEN and ANTHONY COSTANZO,

Defendants-Appellants.

Before:

MOORE and NEWMAN, *Circuit Judges*
and GRIESA,* *District Judge.*

Appeals from judgments of conviction of the District Court of the Southern District of New York (Hon. Lee P. Gagliardi) on various counts of fraud involving financial instruments issued by fictitious off-shore banks. The convictions are affirmed, except as to certain of the counts against defendants Krown and Benjamin which charge the passing of worthless checks in violation of 18 U.S.C. § 1014. The convictions on these counts are reversed on the ground that the statute does not apply to such conduct.

---

* The Honorable Thomas P. Griesa of the United States District Court for the Southern District of New York, sitting by designation.

CAROLYN HANNEMAN, ESQ., Assistant United States Attorney (John S. Martin, Jr., United States Attorney for the Southern District), *for the Appellee.*

KEVIN KROWN, New York, New York, *Defendant-Appellant Pro Se.*

BARRY M. FALLICK, ESQ., New York, New York (Rochman, Platzer & Fallick), *for Defendant-Appellant Maurice Benjamin.*

THOMAS F. LIOTTI, ESQ., Carle Place, New York, *for Defendant-Appellant Feeney.*

THEODORE KRIEGER, ESQ., New York, New York, *for Defendant-Appellant Rosten.*

JOSEPH P. HOEY, ESQ., Mineola, New York (Suozzi, English, Cianciulli & Peirez, P.C.), *for Defendant-Appellant Rosen.*

BARRY A. BOHRER, ESQ., New York, New York, *for Defendant-Appellant Costanzo.*

GRIESA, *District Judge:*

Kevin Krown, Maurice Benjamin, James Feeney, Henry Rosten, Roger Rosen and Anthony Costanzo appeal from judgments of the District Court for the Southern District of New York, following a five-week jury trial before Hon. Lee P. Gagliardi, convicting each of them on multiple counts of violation of federal anti-fraud statutes.

We affirm the convictions, except that we reverse as to two counts (53 and 54) of the 49 counts on which Krown was convicted, and as to three counts (53, 54 and 55) of the eight

counts on which Benjamin was convicted.[1] Counts 53, 54 and 55 of the indictment charge these defendants with passing worthless checks in violation of 18 U.S.C. § 1014. We hold that this statute is inapplicable to the type of conduct charged.

The proof at trial showed a fraudulent scheme built around two fictitious off-shore banks called First London Bank and Trust Co. and First National Bank of Teheran purportedly located in St. Vincent, West Indies. Large amounts of money were obtained from various victims by the use of fraudulent financial instruments held out as being issued by these banks.

We have considered all the issues raised on appeal, and find that all are without merit except the challenge to the applicability of § 1014.

I.

The facts relevant to this issue are as follows. In November 1978 a company connected with Benjamin purchased certain quantities of meat from a wholesale supplier, one Theresa Amelar. In payment for the first two shipments Benjamin gave Mrs. Amelar two purported certified checks drawn on First National Bank of Teheran ("FNBT") in the amounts of $15,000 and $45,000.

Mrs. Amelar deposited these checks in her account at Marine Midland Bank. Marine Midland put these checks into the federal clearinghouse system for collection. They were promptly returned to Marine Midland stamped "No Such Bank." Mrs. Amelar informed Benjamin of this. Benjamin said to have Marine Midland mail the checks directly to St. Vincent for collection. Accordingly, the checks were resubmitted to Marine Midland, which mailed them to St. Vincent.

---

[1] Krown was sentenced to 15 years imprisonment and was fined a total of $86,000. Benjamin was sentenced to 6 years imprisonment and was fined a total of $29,000. The partial reversals as to Krown and Benjamin will not reduce their terms of imprisonment. However, Krown's fines will be reduced by $10,000 ($5,000 on each of the two reversed counts), and Benjamin's fines will be reduced by $15,000 ($5,000 on each of the three reversed counts).

While this process was going on, Benjamin placed an order with Mrs. Amelar for a third shipment of meat. This order was filled, and Benjamin gave Mrs. Amelar a third purported certified check drawn on FNBT. This check was for $29,919.32, and was deposited with Mrs. Amelar's account at Marine Midland, which mailed the check directly to St. Vincent for collection.

Later, Benjamin obtained a genuine Bankers Trust Company certified check for $15,000. He sent it directly to Marine Midland for deposit in Mrs. Amelar's account. This was done in order to make it appear to Mrs. Amelar that the original $15,000 FNBT check had been honored.

Ultimately, of course, Marine Midland's efforts to collect the three checks from FNBT were fruitless. Although the amounts of the three fraudulent checks were temporarily credited to Mrs. Amelar's account, by way of a bookkeeping entry, there is no evidence that Mrs. Amelar made any withdrawal from her account or received a payment of any kind from the bank, based on the balance created by the three checks.

It does not appear that Krown participated directly in the dealings with Mrs. Amelar, although it was he who "created" the fictitious FNBT.

Marine Midland Bank is a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

II.

Section 1014 provides in pertinent part:

"Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . any bank the deposits of which are insured by the Federal Deposit Insurance Corporation . . . upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by

renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years, or both."

Judge Gagliardi charged the jury on the elements which needed to be proved for conviction on the § 1014 counts:

"The essential elements which must be proved in order to establish this offense against any defendant are:

1. That the defendant in question knowingly made, caused to be made or aided and abetted the making of the false statement or overvaluation concerning a material fact;

2. That the statement was made for the purpose of influencing the bank's action with respect to an application or advance, commitment or loan;

3. That the bank was insured by the FDIC."

In his explanation of the term "overvaluation" in the first element, the judge made it clear that he was referring to the overvaluation of security within the language of § 1014, and stated to the jury that a check, about which a false statement has been made as to its value, would be an overvalued security.

Thus, under the trial judge's instruction, the jury was permitted to find Benjamin and Krown guilty under § 1014, if the jury found that they made or caused to be made a false statement or overvaluation of security which had the purpose of influencing a bank upon an advance, loan, application or commitment.

An initial question is whether the statute is limited to frauds committed directly against the financial institutions referred to in the statute. Benjamin's fraud was directed primarily against Mrs. Amelar. Benjamin did not deal directly with Marine Midland, except in the one instance when he sent the $15,000 Bankers Trust check for deposit in her account.

The statute is not limited by its terms to direct dealings with banks. It covers the making of false statements "for the purpose of influencing in any way" the action of an FDIC insured bank upon certain types of transactions. Thus, the statute is broad enough to apply to fraudulent dealings with third persons where it could *also* be said that there was the purpose to influence a bank upon one of the transactions named in the statute.

In the present case, when Benjamin gave the first two FNBT checks to Mrs. Amelar, he must have known that she would deposit these checks in a bank. After Mrs. Amelar told Benjamin about the problem with the checks, Benjamin's suggestion to have Marine Midland send the checks directly to St. Vincent was designed to prolong the bank's collection process in order to gain time for further fraudulent dealings with Mrs. Amelar. With regard to the third FNBT check, Benjamin intended that the check be deposited in the bank and that the bank would undertake collection via mail to St. Vincent. Benjamin's deposit of the Bankers Trust check at Marine Midland was an additional act intended to maintain a facade of regularity in his dealings with Mrs. Amelar.

Thus Benjamin was using Marine Midland to facilitate his fraud against Mrs. Amelar. In terms of the statute, it can be said that he had "the purpose of influencing" Marine Midland to accept the certified checks for deposit in Mrs. Amelar's account and to process those checks for collection over as long a time as possible.

This brings us to the issue of whether the certified FNBT checks were false statements or overvalued security within the meaning of § 1014, and the further issue of whether Benjamin had the purpose of influencing the bank in connection with an advance, loan, application or commitment.

It would seem clear that a fraudulent certified check can be a false statement within the meaning of § 1014. Such a check constitutes a representation that the check has been accepted by the drawee bank and will be paid upon presentation. It would also appear that a worthless check could,

under certain circumstances, constitute overvalued security for an advance, loan or commitment.

However, there is no basis in the evidence for a finding that Benjamin had the purpose of influencing the bank to use the FNBT checks in connection with an advance, loan, application or commitment. The interpretation of these terms in the statute has produced a split in the circuit decisions. The Fifth Circuit has held that the deposit of worthless checks in a bank and subsequent withdrawal of funds based upon those checks, can constitute an advance or loan within the meaning of § 1014. *United States v. Williams*, 639 F.2d 1311 (5th Cir. 1981), *cert. granted*, 50 U.S.L.W. 3375 (Nov. 10, 1981) (No. 80-2116); *United States v. Payne*, 602 F.2d 1215 (5th Cir. 1979), *cert. denied*, 445 U.S. 903 (1980). Both of these cases involved check kiting schemes. The theory of these decisions is that the banks granted immediate credit to the depositors by permitting withdrawals from the account prior to the collection of the deposited checks, and that such immediate credit was an advance or loan. The Third Circuit, declining to follow the *Payne* and *Williams* decisions, has held § 1014 inapplicable to a check kiting scheme. *United States v. Sher*, 505 F. Supp. 858 (W.D. Pa.), *aff'd per curiam*, 657 F.2d 28, *reh'g en banc denied*, 661 F.2d 34 (3d Cir. 1981). The *Sher* decision relied upon the reasoning in *United States v. Pavlick*, 507 F. Supp. 359 (M.D. Pa. 1980). The Third Circuit cases express concern about the possibility that an expansive reading of § 1014 will make that statute a general criminal remedy against the passing of worthless checks, contrary to Congressional intent.

We agree that § 1014 is not designed to have general application to the passing of worthless checks, and that the language of the statute, limiting it to the specified credit transactions, must be given effect. The Second Circuit has warned against construing § 1014 in such a manner as to transform what would normally be state criminal offenses into federal crimes. *United States v. Sabatino*, 485 F.2d 540, 543 (2d Cir. 1973), *cert. denied*, 415 U.S. 948 (1974).

It is unnecessary for us to choose between the Fifth Circuit and Third Circuit views regarding the applicability of § 1014 to check kiting schemes, because the present case does not involve check kiting. Also, it is unnecessary for us to decide whether the granting of immediate credit by a bank, in the form of permitting a withdrawal of funds prior to the collection of a deposited check, constitutes an advance or loan within the meaning of § 1014. In the present case there was no such granting of immediate credit or permission to withdraw funds. All that occurred between Mrs. Amelar and the bank was that she deposited the checks in her account, following which the bank made a bookkeeping entry showing the checks credited to her account, and then attempted to collect the checks. Mrs. Amelar received no funds from the bank based upon the three fraudulent checks, either in the form of a conventional advance or loan or by way of a withdrawal from her account. The mere bookkeeping credit entry did not constitute an advance or loan within the meaning of § 1014.

Not only was there in fact no advance or loan to Mrs. Amelar, but there is no evidence that Benjamin had the purpose of influencing the bank in connection with an advance or loan. The mere intent to have the bank accept the certified checks for deposit and carry out collection procedures is not sufficient to violate the statute.

It is equally true that there was no "application" or "commitment," or any evidence of a purpose by Benjamin to cause such. These broad terms must be interpreted with reference to the statute as a whole, and can only refer to an application or commitment involving an advance or loan or other credit transaction listed in the statute. *See United States v. Pavlick*, 507 F. Supp. 359, 362 (M.D. Pa. 1980). The case relied upon by the Government for the proposition that there was a commitment in the present case, *United States v. Stoddart*, 574 F.2d 1050 (10th Cir. 1978), is distinguishable. That case involved an agreement by a bank to

permit a withdrawal from an account following a fraudulent representation to the bank by the depositor.

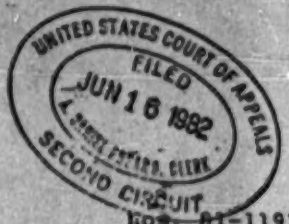
For the foregoing reasons Benjamin's conviction on the § 1014 counts cannot stand. The convictions of Krown on these counts must also fall, since Krown's liability could only derive from that of Benjamin.

The convictions are affirmed, except as to Counts 53 and 54 against Krown and Counts 53, 54 and 55 against Benjamin. As to these counts, we reverse and remand with directions to enter judgments of dismissal.

2

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 16th day of June, one thousand nine hundred and eighty-two.



UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-v-

KEVIN KROWN, MAURICE BENJAMIN, JAMES PEENEY, HENRY ROSTEN, ROGER ROSEN and ANTHONY COSTANZO,

Defendants-Appellants.

Nos. 81-1192
81-1195
81-1196
81-1197
81-1203
81-1204
81-1254

Petitions for rehearing containing suggestions that the actions be reheard in banc having been filed herein by counsel for the defendants-appellants, Anthony Costanzo, James Peeney, Henry Rosten and Roger Rosen, and by the defendant-appellant, Anthony Costanzo, pro se,

Upon consideration by the panel that heard the appeals, it is

ORDERED that said petitions for rehearing are DENIED.

It is further noted that the suggestions for rehearing in banc have been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeals and that no such judge has requested that a vote be taken thereon.

A: Daniel Fusaro, Clerk

by:

Francis X. Gindhart

Francis X. Gindhart
Chief Deputy Clerk

A

-1a-

Letter Dated September 22, 1978

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

MGB:MS.rcw

F. # 743036 September 22, 1978

Marvin Segal, Esq.
Segal & Hundley
745 Fifth Avenue
New York, New York 10022

Re: United States v. James W. Feeney

Docket No. 78 CR 359

Dear Mr. Segal:

This letter is being written to confirm the agreement entered into between this office and your client, James W. Feeney, named as a defendant in the above-captioned case.

It is agreed, in exchange for the promises set forth below, that your client will cooperate fully with this office, agents of the Federal Bureau of Investigation, and other law enforcement agencies as this office may require. This cooperation will include the following:

1. James W. Feeney agrees to be fully debriefed concerning his knowledge of, and participation in, certain letters of credit issued from February 1,

1974 to July 21, 1974 between the Hempstead Bank, Mineola, New York and the Bank of East Orange, Orlando, Florida. In addition, James W. Feeney agrees to be fully debriefed concerning his knowledge in financial dealings throughout the Eastern District of New York, the Continental United States and in connection with the dealings of off-shore financial institutions. This debriefing will be conducted by this office, agents of the Federal Bureau of Investigation, and other law enforcement agencies, as this office may require. All documents which are relevant to the investigation and which are in his possession or under his control will be furnished to this office upon request. All information provided by James W. Feeney shall be truthful, complete and accurate;

2. James W. Feeney agrees to testify as a witness before a Grand Jury in this district or elsewhere as may be requested, and at any resulting trials, either in this district or elsewhere, as this office may require.

3. James W. Feeney agrees to cooperate with agents of the Federal Bureau of Investigation or other law enforcement agencies, as this office may require, in investigations arising from information provided by him. This cooperation includes, but is not limited to, undercover introductions.

In exchange for the cooperation of James W. Feeney, as set out above, this office agrees to the following:

1. This office will permit James W. Feeney to plead guilty to an information containing one count of a violation of Title 18 United States Code, Section 1014, to cover his heretofore disclosed participation in any criminal activity involving the period

February 1974 through June 1974 and involving the Hempstead Bank, Mineola, New York, and the Bank of East Orange, Orlando, Florida. James W. Feeney agrees that this plea of guilty will be taken under oath pursuant to Rule 11(e)(5), Fed. R. Crim. P. Furthermore no information so disclosed by James W. Feeney during the course of his cooperation will be used against him.

2. This office, prior to James W. Feeney's sentencing, will advise the sentencing court of the nature and extent of his cooperation including its investigative and prosecutive value, truthfulness, completeness and accuracy. In this connection, it is understood that this office's determination of the value, truthfulness, completeness and accuracy of this cooperation shall be binding upon the defendant and its statement to the sentencing court may be made either orally or in writing. However, this office will make no specific recommendations with respect to sentencing. This office makes no representations to James W. Feeney concerning any sentence that may be imposed upon the aforementioned plea of guilty, such matters being solely within the province of the sentencing court.

3. This agreement is limited to the United States Attorney's Office for the Eastern District of New York and cannot bind other federal, state or local prosecuting authorities.

It is further understood that James W. Feeney must at all times give complete, truthful and accurate information and testimony. Should it be judged by this office that James W. Feeney has intentionally given false, misleading or incomplete information or testimony or has otherwise violated any provision of this agreement, this agreement

Letter Dated September 22, 1978

may be deemed null and void by this office and he shall thereafter be subject to prosecution for any federal criminal violation of which this office has knowledge including but not limited to perjury and obstruction of justice. Any such prosecution may be premised upon any information provided by James W. Feeney during the course of his cooperation and such information may be used against him. Also James W. Feeney's previously entered plea will stand.

Finally, it is understood that this agreement was reached without regard to any civil tax matters that may be pending or may arise involving James W. Feeney.

No additional promises, agreements and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signd by all parties.

If the foregoing accurately reflects the agreement entered into between this office and your client, James W. Feeney it is requested that James W. Feeney and yourself execute this letter as provided below.

Very truly yours,
EDWARD R. KORMAN
United States Attorney

By:

.....
MAX SAYAH
Assistant U.S. Attorney

Letter Dated September 22, 1978

I have received this letter from Marvin Segal, Esq., and discussed it with him, have read it, and I hereby acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Eastern District of New York. I state that there have been no additional promises or representations made to me by any officials of the United States Government in connection with this matter.

.....
James W. Feeney

Witnessed by: Marvin Segal
Counsel for Defendant James W. Feeney

.....
Marvin Segal, Esq.

B. 82-5228

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA, :

-vs- :

JAMES FEENEY, :

Defendant. :

- X

78 CR 356

RECEIVED
AUG 14 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States Courthouse
Westbury, Long Island
New York

December 27, 1979

B E F O R E :

HONORABLE GEORGE C. PRATT, U.S.D.J.

RAYMOND P. STALKER
Court Reporter

A P P E A R A N C E S :

EDWARD R. KORMAN, ESQ.
United States Attorney for the Eastern
District of New York

BY: MAX SAYAH, ESQ.
Assistant U. S. Attorney

MARVIN B. SEGAL, ESQ.
Attorney for Defendant
866 United Nations Plaza
New York, New York

oOo

RS/an

(The following occurred in chambers.)

THE COURT: Sit down, please.

Allen told me that there was some sensitive matters pertaining to the sentencing that you wanted me to hear in chambers, rather than in Court?

MR. SAVAH: Yes, Your Honor. The Government has at the request of the defendant been adjourning this case since roughly last September of 1978, and of course there has been an unusual situation to adjourn for such a long time.

But, Mr. Feeney was cooperating with the Southern District in an undercover investigation. It was sensitive in nature.

I am familiar with a few of the facts, but I've asked Mr. Thomas Sear of the U. S. Attorney's Office to come in and speak as to that aspect of the cooperation shown by Mr. Feeney.

At the time of the plea there was an 11E agreement. The Government agreed that the plea would be taken and the Government would take no position on sentence, and the Government still adheres to that position as to the Eastern

District case. But, inasmuch as Mr. Feeney cooperated in the Southern District, it is felt that you should hear what the Southern District has to say relative to this matter.

THE COURT: I will hear you.

MR. SEAR: Thank you, Your Honor, for this opportunity.

I would ask that Your Honor that the minutes of this portion of the sentence proceeding be sealed.

I would briefly like to describe in general the cooperation Mr. Feeney has provided our office.

In a nutshell, in the early portion of this year he came to our office, provided us with information to the effect that he had been introduced to Mr. Robert Vesco, and as Your Honor I am sure is aware, Mr. Vesco is a fugitive on a number of indictments arising out of the Southern District and considered a very important fugitive.

Initially it was contemplated that Mr. Feeney would attempt to help our office in terms of locating Mr. Vesco in an area where he might be

extradited, and to that end Mr. Feeney agreed to maintain contact with Mr. Vesco and other persons that had introduced him to Vesco.

The nature of the initial contact with Vesco was that other individuals were proposing a scheme whereby high Government officials in the United States would be bribed with millions of dollars to corruptly allow certain plans to be exported from the United States to Libya, and Mr. Feeney agreed to cooperate and work in an undercover capacity also with respect to that investigation.

The Government gave Mr. Feeney no assurance whatsoever as to any immunity or anything else, other than that we would certainly consider and we welcomed his cooperation in what we considered a very important investigation.

Subsequently Mr. Feeney did work throughout 1979 in an undercover capacity. On a number of occasions he traveled outside the country and met with Mr. Vesco and thus put himself in a situation where the Government was unable to provide any protection for his personal safety, and he was obviously, if his status had been discovered there

would have been considerable risk to his safety.

The Government was able to obtain hard evidence in terms of numerous tape recordings of telephone conversations that Mr. Feeney had with Mr. Vesco himself and other individuals.

Mr. Feeney was wired up and recorded face-to-face conversations with several of these individuals on five or six occasions.

In short, in connection with his cooperation, in our judgment, he was entirely truthful and he certainly worked very hard on a very important investigation.

Because of outside influences there had b problems with the investigation. However, to thi date it still continues and Mr. Feeney's activities continue to this date, and basically those general facts are what we wish to bring to Your Honor to make you aware of what he has done for the Government in this particular investigation of the Southern District.

Let me explain that I came into this investigation in September. Mr. Doonan is the investigator in our office who has been working with Mr. Feeney on this investigation since its

inception in the Southern District back in January.

MR. DOONAN: Another important fact that had not been mentioned was that during the course of the investigation, which started in the early part of February of 1979, Mr. Feeney in making these trips both in Nassau and to Houston and Washington, D.C. had to lay out a substantial amount in connection with the case and he has laid out in excess of $10,000 of his own personal money in furthering himself into the particular scheme so he could give back to us the information that we needed to proceed with the investigation.

I think the -- the most important thing Mr. Feeney has done is contacted Mr. Vesco where he basically has laid his life on the line with Vesco, where we would have been absolutely no help in saving him or helping him, because we had no surveillance and no way of contacting him when he was out of the country.

That's basically it.

MR. SAYAH: The Government has no other position in this particular case that is before the Court.

THE COURT: All right, I appreciate your coming out and enlightening me about this. I consider it significant. I can understand your not wanting to convey it by way of letter and also, I think there is sufficient reason to have the minutes of what we are doing here sealed, and I will so order it.

In as far as the sentencing itsalf is concerned, I think it would probably be better if we carried it out out in the courtroom.

I don't think there is any particular need to refer to cooperation in your statements on behalf of your client. I am sure what has been said has been said with full concurrence and urging and that it deserves substantial consideration in an appropriate sentence.

MR. SEGAL: Very well, Your Honor.

THE COURT: I do have a question though. There was a conviction in the Southern District relatively recently within the last two or three years, wasn't there?

MR. SEGAL: I believe, Your Honor, that conviction was in 1974 and the sentence was given Mr. Feeney by the late Judge Gurfein on

March 14, 1974, and he was sentenced to serve a one year term and was given a $10,000 fine. He served it actually.

THE COURT: That was the last one?

MR. SEGAL: That's right, the last one. I believe that is the only one.

THE COURT: There is some confusion in my notes. One of the other Judges thought there was a pending sentence from the Southern District, but if that is the one, that is covered in the pre-sentence report.

MR. SEGAL: There is no pending sentence anywhere and there is no matter of that nature.

MR. SAYAH: Your Honor, to put this in proper perspective, I believe we stated initially that the events of this particular indictment took place sometime around March of 1974.

THE COURT: Yes.

MR. SAYAH: In other words --

MR. SEGAL: I would address myself --

THE COURT: He was on probation from the Southern District sentence or parole?

MR. SAYAH: The events took place in March of 1974 in connection with this Hempstead

Bank. At that time he had either just been indicted or was indicted around that time and sentence was executed in July of 1974.

We're talking about a time period that is very close to the same area.

THE COURT: Yes, I get the picture now. Okay, I'll be out in two minutes.

MR. SEAR: Thank you very much.

MR. SEGAL: Thank you, Your Honor.

(Whereupon, the Court recessed.)

(Whereupon, the Court resumed in open Court.)

THE CLERK: United States of America versus Feeney for sentence. Will counsel and defendant please step forward?

MR. SEGAL: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Mr. Feeney, you have previously pled guilty before me to a one count information. Do you wish for any reason to change your plea?

THE DEFENDANT: No, sir.

THE COURT: Mr. Segal, do you know of any legal reason why sentence should not be pronounced at this time?

MR. SEGAL: I do not, Your Honor.

THE COURT: Do you know of any reason, Mr. Feeney?

THE DEFENDANT: No, sir.

THE COURT: Is there anything you wish to say on behalf of your client?

MR. SEGAL: Yes, Your Honor.

Your Honor, as I believe the Court is aware of the circumstances of this one count information. It occurred at or about a time that Mr. Feeney had been involved in a situation for which he was ultimately sentenced to serve a year in prison and pay a $10,000 fine.

He was released within six months on that sentence and is still at this time, pursuant to an agreement with the Government paying that fine down.

Now, the set of circumstances and the information which is before Your Honor are such that rather than be appraised as still another in a series of events, rather it was a part and parcel of events which had ultimately resulted in his being incarcerated.

There are no other outstanding proceedings against Mr. Feeney. There is no charge that has

been made to this date and, it is at this time, Your Honor, that I feel that certain items may be important in terms of Your Honor's consideration.

The plea that has been entered into in this case, I believe that in the pre-sentence report it does make a distinction indicating that there was either a cavalier attitude or that there was a lack of respect of what the law is.

I think that that may be put in greater proportion, if as the Court now knows, this crime was not something that was undertaken separately and independently from the other crimes or the other crime that was the subject of the Southern District proceeding.

Rather, there was a situation in which Mr. Feeney actually during the time that he was incarcerated was interviewed by the Federal Bureau of Investigation in connection with the instant event, provided them with full information.

This was prior to the time that he was ever indicted in this case.

He provided them with statements and indeed he provided them on at least three different occasions with details relating to that event. I am aware of the disposition of other individuals who had been also charged in that case, and it may very well have been, although I cannot represent this to the Court, that at least some of the information provided by Mr. Feeney may have been instrumental in those dispositions.

Now, one of the factors that are brought up in the pre-sentence report is the substantial nature of the monies realized out of this particular crime.

I believe the sum total would be approximately $8,000. I believe also that the question about Mr. Feeney's finances may very well have been brought to Your Honor's attention a day ago with the submission of tax returns and with the net worth statement.

Rather than attempting to avoid making this disclosure, it appeared that at the time we would have a substantial delay, and for that reason there was no submission made.

One of the factors seems to be that Mr.

Feeney did not provide addresses and identification of members of his family. I don't wish to quarrel with that statement, but I would point out that addresses of the entire family had been given to the Probation Officer and there was one very good reason why there was some reluctance.

That is Mr. Feeney has two sons and a daughter, neither of whom know about his incarceration.

He was apprehensive about that, his family finding out or having his father or mother approached or his sisters and making them aware of it.

He has not been proud of his incarceration and perhaps out of an excess of too much caution he has tried to protect them from that.

His wife from whom he is now separated has been a great support to him morally and emotionally, and she was of course aware of all this as it went on.

Rather than address myself to the specifics of whether or not Mr. Feeney did actually prepare the letter of credit which is delineated in this information, I would merely indicate that the fact may be that he had prepared a contract and not

the letter of credit itself, and in a statement which he had given to the FBI it indicated that his actual knowledge of the falsity of it did not occur until almost the time when we was departing for his incarceration.

Your Honor, Mr. Feeney has pointed out is an individual who has tried in as many ways as possible to expiate this crime, to get this behind him and to launch on to something that may be productive and in which he can become a resident member of this community.

It is his intention and his hope that he can support his family from whom he is now separated, but with whom he maintains extremely close ties; two children in college, a young daughter who has just been awarded a scholarship at Hofstra.

They have grown up in a fine atmosphere in the home and they show the results of the attention and the care.

Mr. Feeney has gone at least some payment to society for his crimes. I believe that coming as they did, all in a bunch and all as a pattern, that hopefully that time is sufficient

in terms of his learning a lesson about being a productive member of the community.

It is hoped, Your Honor, that this Court will see fit to enable him to continue his ongoing procedures and his ongoing business and his ongoing undertakings which continue to be of vital importance to a great number of people, not the least of which is his family.

I would ask Your Honor that you deal with Mr. Feeney in a way which would be consistent with his remaining a part of this community and being able to remain close with his family.

Thank you.

THE COURT: Mr. Feeney, is there anything you wish to say on your own behalf?

THE DEFENDANT: Yes, please.

This incident I guess, if I had retrospect, had a little more common sense, I would have dealt with it at the time when I was being sentenced at the last crime and I didn't. It's nice to have hindsight on how you should have done things, but I didn't do it, and I guess it was like something that was festering there and it did catch up with me.

I went to jail, that's probably the worst experience of my life, and I wouldn't want to go back.

I think I have shown for six years that, you know, going to jail was a bad lesson. It's something that as far as I can see, the mental anguish I think it caused me personally, but the mental anguish of thinking about starting over again, I don't know.

I just -- I just would like to think that whatever I have done, the time I spent in there, it was a time I guess well spent, because I don't want to go back, obviously.

But, I would think that just the memory of it, just standing here, it is just -- it's just like even too much to think about, and I think I have proven myself over six years that I have no intention of doing anything again.

I am back on a good financial footing again. I know how hard it was when I came out. I had to go into debt to get started again, but I would think the last six years, if you look back at them, you know, it's been very tough.

But, I'm back on my feet again and I would like to say that -- I would like to think, you know, I am a decent citizen. I pay my taxes, I do what I'm supposed to do and I think that if I had anything to interrupt that again, I just don't know -- I don't know I could get started again.

I have nothing else to say.

THE COURT: Thank you.

Does the Government have any position, Mr. Sayah?

MR. SAYAH: No, Your Honor.

THE COURT: In arriving at what I consider to be an appropriate sentence under all the circumstances, I have considered all of the information that has been made available to me, as well as the recommendations of the Probation Department and of my conferring Judges.

I think it is fairly apparent, number one, that the present crime is in the nature of a tag along crime to the matter for which the defendant was convicted in the Southern District.

I think it is almost apparent that there has been a significant change in the defendant's life

and attitude towards society.

Taking into consideration all those factors and all the information that has been supplied to me, the sentence that I will impose is as follows:

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of two years and fined the sum of $3,000.

The execution of sentence as to imprisonment only is suspended and the defendant is placed on probation for a period of three years.

There aren't any other outstanding charges, are there, Mr. Sayah?

MR. SAYAH: No, Your Honor.

MR. SEGAL: We have a matter of bail?

MR. SAYAH: I have no bail.

MR. SEGAL: We have no more then, Your Honor, thank you.

THE COURT: Thank you, gentlemen.

MR. SEGAL: The payment of this fine, may we just clarify that?

Is the Court of the mind that we might have a month to pay, if that's all right?

We'll pay it more quickly if you want?

THE COURT: 30 days granted.

MR. SEGAL: Thank you, Your Honor.

MR. SAYAN: Thank you.

THE COURT: Thank you, gentlemen.

(Whereupon, these proceedings were concluded.)

C E R T I F I C A T I O N

I, RAYMOND P. STALKER, a Court Reporter for the Eastern District of New York, hereby certify the foregoing transcript as being true and accurate.

RAYMOND P. STALKER

FILED
STATES DISTRICT
COLORADO
MAR 18 1980
JAMES R. MANSPEAKER
CLERK
DEP CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Superseding
Will of particulars

UNITED STATES OF AMERICA, Plaintiff, v. KEVIN BARRY KROWN, aka Kevin Crown, aka Kevin Barry, aka Barry Krown; JAMES FEENEY; VINCENT CARRANO, ANTHONY P. CAVANAUGH; KAY ROBOHM, EDWARD ALEXANDER and GUY VINCENT, Defendants.	Criminal Case No. 80-CR-54 SUPERSEDING INDICTMENT 18 U.S.C. §§ 371, 2314, 1014, 1341, 1343 and 2

COUNT I

The Grand Jury charges that:

From on or about December 30, 1977, and continuously thereafter up to and including the present in the State and District of Colorado, and elsewhere, KEVIN BARRY KROWN, also known as Kevin Crown, Kevin Barry and Barry Krown (hereinafter referred to as KEVIN BARRY KROWN), JAMES FEENEY, VINCENT CARRANO, ANTHONY P. CAVANAUGH, KAY ROBOHM, EDWARD ALEXANDER, and GUY VINCENT together with other co-conspirators, to the Grand Jury known and unknown, did combine, conspire, confederate and agree together with each other and with other persons to commit offenses against the United States: that is, to knowingly and willfully transport and cause to be transported in inter-state and foreign commerce from the State of New York and from St. Vincent, British West Indies banks to the State of Colorado, falsely and fraudulently made securities, purporting to be checks from British West Indies banks as more fully described herein, and to make and cause to be made materially false statements submitted to the First National

Bank of Westminster, First National Bank of Bear Valley and the Jefferson Bank and Trust, the deposits of the three banks being insured by the Federal Deposit Insurance Corporation, and Western Federal Savings and Loan, the deposits of which were insured by the Federal Savings and Loan Corporation, for the purpose of influencing the action of said banks and savings and loan institutions in accepting checks crediting various accounts, and advancing funds and credit thereon, in furtherance of a plan and purpose to violate Title 18, United States Code, Sections 371, 2314, 1014 and 2.

(a) It was a part of said conspiracy that KEVIN BARRY KROWN would and did sometimes incorporate and charter banks in the British West Indies.

(b) It was further a part of said conspiracy that KEVIN BARRY KROWN would and did list and cause to be listed non-existent and inflated assets in the course of incorporating and chartering banks in the British West Indies.

(c) It was further a part of said conspiracy that KEVIN BARRY KROWN would and did incorporate, charter and otherwise create the First London Bank and Trust Company, Limited, the First National Bank of Teheran, the European Credit Bank Corporation and the Aeiola Bank and Trust, hereinafter sometimes referred to as "off-shore banks."

(d) It was further a part of said conspiracy that defendants printed and caused to be printed bank instruments purporting to be and including, but not limited to letters of credit, cashier's checks, certified checks and official checks (hereinafter at times referred to as checking items) of the banks referred to in paragraph (c) above.

(e) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants

herein, on various occasions, would and did meet in New York City, New York, and did discuss and exchange checking items referred to in paragraph (d) above.

(f) It was further a part of said conspiracy that defendants would and did induce and cause to be induced themselves and others to purchase the checking items referred to in paragraph (d) above, when the defendants well knew and should have known that the off-shore banks did not have funds as represented by the checking items.

(g) It was further a part of said conspiracy that defendants induced persons desiring to purchase land to be used in the development of a project entitled "Science Fiction Land" in Aurora, Colorado, to purchase checking items referred to in paragraph (d) and to present them for payment, credit and collection.

(h) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants herein, would and did falsely refer to the purchases of the items mentioned in paragraph (f) as "loans."

(i) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants herein, would and did present and cause to be presented said checking items referred to in paragraph (d) to the First National Bank of Westminster, the Jefferson Bank and Trust, the First National Bank of Bear Valley and Western Federal Savings and Loan Corporation for payment, credit and collection. When defendants well knew and should have known that the off-shore banks did not have funds as represented by the checking items.

(j) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants herein, would and did utilize a post-dated check to falsely indicate that a purchase of checking items referred to in paragraph (f) was actually a loan.

(k) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants herein, would and did form a company in Denver, Colorado, First Financial Group, Limited, to facilitate the fraudulent use of the checking items referred to in paragraph (d).

(l) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants herein, would and did utilize a company known as First Group Corporation and its bank account at First National Bank of Denver, to facilitate the fraudulent use of the checking item referred to in paragraph (d).

(m) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants herein, would and did induce clients and other persons to deposit checking items referred to in paragraph (d) into their personal and business bank accounts.

(n) It was further a part of said conspiracy that defendants and other co-conspirators not named as defendants herein, would and did instruct clients and other persons to withdraw the funds created by the deposits referred to in paragraph (m) and obtain and write checks on their accounts and withdraw cash therefrom as directed by defendants and other co-conspirators not named as defendants herein.

(o) It was further a part of said conspiracy that as some of the checking items referred to in paragraph (n) were deposited in the accounts of First Financial Investment Group, Limited, defendants and other co-conspirators not named as defendants herein, would and did withdraw and cause to be withdrawn monies thereon.

(p) It was further a part of said conspiracy that defendants caused banks receiving the checking items referred to in paragraph (d) to mail and otherwise process them for

payment, credit, and collection to the off-shore banks created by defendant KEVIN BARRY KROWN knowing that the items would not be honored when initially presented.

(q) It was further a part of said conspiracy that defendants would and did stall and delay the collection process referred to in paragraph (p) by various means and methods.

OVERT ACTS

The Grand Jury charges that:

In furtherance of the conspiracy and to accomplish its objectives, the defendants and other co-conspirators not named as defendants herein, committed and caused to be committed the following overt acts:

1. Between on or about December 30, 1977, and December 30, 1979, KEVIN BARRY KROWN and others named and not named as defendants herein, registered, chartered and otherwise instituted, and caused to be registered, chartered, and otherwise instituted, various off-shore banks in the British West Indies including the First London Bank and Trust Company, Limited, the First National Bank of Teheran, S.A.K., Limited, the European Credit Bank Corporation, and the Aeiola Bank and Trust.

2. On or about August 17, 1978, KEVIN BARRY KROWN filed and caused to be filed with the Government of St. Vincent, British West Indies, a Resolution changing the name of the First London Bank and Trust, Limited, to First National Bank of Teheran, S.A.K., Limited.

3. On September 13, 1978, KEVIN BARRY KROWN paid and caused to be paid fees for filing of a First National Bank of Teheran, S.A.K., Limited, Resolution and Certificate.

4. On February 14, 1979, KEVIN BARRY KROWN paid and caused to be paid an annual fee of $500.00 in East Carribean currency for the registration of the period January 1, 1979 through December 31, 1979.

5. On or about May 10, 1979, ANTHONY P. CAVANAUGH and others were introduced by VINCENT CARRANO to JAMES FEENEY and GUY VINCENT in New York City, New York.

6. On or about May 10, 1979, ANTHONY P. CAVANAUGH, VINCENT CARRANO, JAMES FEENEY, GUY VINCENT and others, met and had a discussion at the Barclay Hotel in New York City, New York, regarding the purchase of off-shore bank checking items.

7. On or about May 10, 1979, GUY VINCENT traveled to the British West Indies from New York City, New York, and obtained a number of purported off-shore bank checking items and he returned to New York City with the items.

8. On or about May 11, 1979, in New York City, New York, ANTHONY P. CAVANAUGH received a number of purported blank certified checks drawn on the First National Bank of Teheran from JAMES FEENEY, GUY VINCENT and others.

9. On or about May 12, 1979, ANTHONY P. CAVANAUGH and others entered into an agreement forming First Financial Group, Limited.

10. On or about May 18, 1979, First Financial Investment Group, Limited, by ANTHONY P. CAVANAUGH and others, opened checking account number 07-15344 and savings account number 78-05207 at the Jefferson Bank and Trust Company.

11. Between on or about May 10, 1979, and May 28, 1979, the following certified and official checks were deposited and caused to be deposited by ANTHONY P. CAVANAUGH and others into bank accounts of Xerographic Supply Company, Promach and Dick Cloud Realty, Incorporated:

Certified Check	1097
Dated	May 10, 1979
Amount	$30,000.00
Payee	Promach
Maker	Christopher Capital Corporation Ft. Lauderdale, Florida
Signed	PAUL J. WINTERS
Drawn on	First National Bank of Teheran S.A.K., St. Vincent, West Indies
Endorsement	Promach, account number 70-01364

Certified Check	1094
Dated	May 10, 1979
Amount	$35,000.00
Payee	First Financial Investment Group, Limited
Maker	Christopher Capital Corporation Ft. Lauderdale, Florida
Signed	PAUL J. WINTERS
Drawn on	First National Bank of Teheran S.A.K., St. Vincent, West Indies
Endorsements	Promach by GEORGE McCULLAR III

Cashier's Check	1435
Dated	May 28, 1979
Amount	$35,000.00
Payee	First Financial Investment Group, Limited
Remitter	First Group Corporation (FGC)
Drawn on	European Credit Bank Corporation St. Vincent, West Indies
Signed	ERIC PAUL HILTON
Endorsement	To Promach by GEORGE McCULLAR III

Cashier's Check	1428
Dated	May 28, 1979
Amount	$30,000.00
Payee	First Financial Investment Group, Limited
Remitter	First Group Corporation
Drawn on	European Credit Bank Corporation
Signed	ERIC PAUL HILTON
Endorsement	To Promach by GEORGE McCULLAR III

Certified Check	1095
Dated	May 10, 1979
Amount	$30,000.00
Payee	First Financial Investment Group, Limited
Maker	Christopher Capital Corporation Ft. Lauderdale, Florida
Signed	PAUL J. WINTERS
Drawn on	First National Bank of Teheran S.A.K., St. Vincent, West Indies
Endorsement	To Dick Cloud Realty by GEORGE McCULLAR, III, Controller

Cashier's Check	1432
Dated	May 28, 1979
Amount	$35,000.00
Payee	First National Investment Group, Limited
Maker	First Group Corporation St. Vincent, West Indies
Signed	
Endorsement	to Dick Cloud Realty by WILLIAM SCHLAPMAN, Controller

and also see items attached on Page 8A.

12. Beginning on or about May 22, 1979, and continuing through June 5, 1979, ANTHONY P. CAVANAUGH and others made and caused to be made checking deposits into the checking account of First Financial Investment Group of checking items drawn on the accounts of Xerographic Supply Company and Promach and Dick Cloud Realty, Incorporated.

13. On or about May 28, 1979, ANTHONY P. CAVANAUGH and others caused European Credit Bank Corporation checks to be deposited into the bank accounts of First Financial Investment Group, Limited.

14. Beginning on or about June 7, 1979, and continuing through to on or about July 26, 1979, ANTHONY P. CAVANAUGH and others made and caused to be made deposits in Jefferson Bank and Trust Company account 07-15?44 totaling approximately $210,000.00 and consisting of approximately eight (8) checks drawn on the European Credit Bank Corporation, St. Vincent, British West Indies and subsequently withdrew and caused to be withdrawn approximately $150,000.00 therefrom.

15. Beginning on or about June 11, 1979, and continuing through to on or about June 19, 1979, KEVIN BARRY KROWN telephonically assured the First National Bank of Westminster, Westminster, Colorado that the checking items were valid.

16. On or about May 18, 1979, ANTHONY P. CAVANAUGH purchased a 1979 cadillac VIN-6CB69200803 from Rickenbaugh Cadillac, Denver, Colorado, for $16,431.78 with a purported check drawn on the First National Bank of Teheran in the amount of $18,500.00 subsequently received the cadillac and a Rickenbaugh Cadillac check for the difference in the amount of $2,798.22.

17. On or about June 20, 1979, ANTHONY P. CAVANAUGH, KEVIN BARRY KROWN and others made and caused to be made a

wire transfer in the amount of $35,100.00 from the First National Bank of Denver to Barclay's Bank International, Limited, Nassau, Bahamas.

18. On or about June 20, 1979, ANTHONY P. CAVANAUGH, KEVIN BARRY KROWN and others made and caused to be made a wire transfer of $35,000.00 from Barclay's Bank International, Limited, Nassau, Bahamas, to First National Bank of Westminster, so as to indicate that the funds came from the European Credit Bank Corporation.

19. On or about September 30, 1979, KEVIN BARRY KROWN and others returned and caused to be returned checks drawn on the European Credit Bank Corporation to the First National Bank of Denver stamped "STOP PAYMENT - LIEN ON COLLATERAL - PENDING THIRD PARTY ACTION."

20. On or about December 19, 1979, KAY ROBOHM took persons interested in purchasing property (the "purchasers") in Aurora, Colorado, to be used in the development of a project entitled "Science Fiction Land", to New York City, New York, to meet with EDWARD ALEXANDER and JAMES FEENEY and others.

21. On or about December 20, 1979, JAMES FEENEY and others cashed and caused to be cashed cashier's checks in the amount of $57,000.00 at the Morgan Guaranty Bank, New York City, New York, by the purchasers.

22. On or about December 20, 1979, JAMES FEENEY and others delivered the following purported checks to the purchasers referred to in paragraph 20, in New York City, New York.

(a) Cashier's check in the amount of $135,000.00 drawn on the Aeiola Bank and Trust, St. Vincent, West Indies.

(b) Cashier's check in the amount of $250,000.00 drawn on the Aeiola Bank and Trust, St. Vincent, West Indies.

23. On or about January 15, 1980 KEVIN BARRY KROWN talked by telephone with a purchaser and told him that the checks had not been paid because they had not been received. All in violation of Title 18, United States Code, Sections 371, 2314, 1014 and 2.

COUNT II

The Grand Jury further charges that:

Between on or about May 10, 1979, and May 30, 1979, KEVIN BARRY KROWN, JAMES FEENEY, VINCENT CARRANO, and ANTHONY P. CAVANAUGH, willfully, knowingly and with unlawful and fraudulent intent, did transport and cause to be transported in interstate and foreign commerce from the State of New York and the British West Indies to the State and District of Colorado and elsewhere outside Colorado a falsely made security, purporting to be a Certified check, knowing the same to be falsely made, said check of the tenor and description following, to wit:

First National Bank of Teheran, Certified Check, Serial Number 1097 in the amount of $30,000.00, dated May 10, 1979, payable to Promach, signed PAUL J. WINTERS, and drawn on the account of Christopher Capital Corporation, Fort Lauderdale, Florida,

all in violation of Title 18, United States Code, Sections 2314 and 2.

COUNT III

The Grand Jury further charges that:

Between on or about May 10, 1979, and May 30, 1979, KEVIN BARRY KROWN, JAMES FEENEY, VINCENT CARRANO, and ANTHONY P. CAVANAUGH willfully, knowingly and with unlawful and fraudulent intent, did transport and cause to be transported in interstate and foreign commerce from the State of New York and the British West Indies to the State and District of Colorado and elsewhere outside of Colorado a falsely made security, purporting to be a Certified check, knowing the same to be falsely made, said check being of the tenor and description following, to wit:

First National Bank of Teheran, Certified Check Serial Number 1094, in the amount of $35,000.00

dated May 10, 1979, payable to First Financial Investment Group, signed by PAUL J. WINTERS, and drawn on the account of Christopher Capital Corporation, Fort Lauderdale, Florida, and endorsed to Promach,

all in violation of Title 18, United States Code, Sections 2314 and 2.

COUNT IV

The Grand Jury further charges that:

Between on or about May 10, 1979, and May 30, 1979, KEVIN BARRY KROWN, JAMES FEENEY, VINCENT CARRANO, GUY VINCENT, and ANTHONY P. CAVANAUGH willfully, knowingly and with unlawful and fraudulent intent, did transport and cause to be transported in interstate and foreign commerce from the State of New York and the British West Indies to the State and District of Colorado and elsewhere outside of Colorado a falsely made security, purporting to be a Certified check, knowing the same to be falsely made, said check being of the tenor and description following, to wit:

First National Bank of Teheran, Certified Cehck, Serial Number 1095 in the amount of $30,000.00 dated May 10, 1979, payable to First Financial Investment Group, Limited, signed PAUL J. WINTERS, and drawn on the account of the First National Bank of Teheran, S.A.K., St. Vincent, British West Indies,

all in violation of Title 18, United States Code, Sections 2314 and 2.

COUNT V

The Grand Jury further charges that:

On or about May 18, 1979, in the State and District of Colorado, KEVIN BARRY KROWN, JAMES FEENEY, VINCENT CARRANO, ANTHONY P. CAVANAUGH and GUY VINCENT, willfully and knowingly did make and cause to be made a materially false statement and did overvalue a security by submitting and causing to be submitted an item purporting to be check No. 1097 in the amount of $30,000.00 drawn on the account of Christopher Capital Corporation, Ft. Lauderdale, Florida and certified by the First National Bank of Teheran, to the First National Bank of Westminster, Westminster, Colorado, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank in accepting said check for payment and credit as an advance of funds and credit, well knowing that said check was false and fraudulent, in violation of Title 18, United States Code, Sections 1014 and 2.

COUNT VI

The Grand Jury further charges that:

On or about May 24, 1979, in the State and District of Colorado, KEVIN BARRY KROWN, JAMES FEENEY, VINCENT CARRANO, ANTHONY P. CAVANAUGH and GUY VINCENT, willfully and knowingly did make and cause to be made a materially false statement and did overvalue a security by submitting and causing to be submitted an item purporting to be check No. 1094 in the amount of $35,000.00 drawn on the account of Christopher Capital Corporation, Ft. Lauderdale, Florida and certified by the First National Bank of Teheran, to the First National Bank of Westminster, Westminster, Colorado, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank in accepting said check for payment and credit as an advance of funds and credit, well knowing that said check was false and fraudulent, in violation of Title 18, United States Code, Sections 1014 and 2.

COUNT VII

The Grand Jury further charges that:

On or about May 21, 1979, in the State and District of Colorado, KEVIN BARRY KROWN, JAMES FEENEY, VINCENT CARRANO, ANTHONY P. CAVANAUGH and GUY VINCENT, willfully and knowingly did make and cause to be made a materially false statement and did overvalue a security by submitting and causing to be submitted an item purporting to be check No. 1095 in the amount of $30,000.00 drawn on the account of Christopher Capital Corporation, Ft. Lauderdale, Florida and certified by the First National Bank of Teheran, to the First National Bank of Westminster, Westminster, Colorado, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank in accepting said check for payment and credit as an advance of funds and credit, well knowing that said check was false and fraudulent, in violation of Title 18, United States Code, Sections 1014 and 2.

COUNT VIII

The Grand Jury further charges that:

On or about June 4, 1979, in the State and District of Colorado, KEVIN BARRY KROWN, VINCENT CARRANO, and ANTHONY P. CAVANAUGH willfully and knowingly did make and cause to be made a materially false statement and did over value a security by submitting and causing to be submitted an item purporting to be official check No. 1425 of the European Credit Bank Corporation, St. Vincent, British West Indies in the amount of $33,853.00 to the First National Bank of Denver, Denver, Colorado, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank in accepting said check for payment, credit, and as an advance of funds and credit well knowing that said check was false and fraudulent in violation of Title 18, United States Code, Sections 1014 and 2.

COUNT IX

The Grand Jury further charges that:

On or about July 26, 1979, in the State and District of Colorado, KEVIN BARRY KROWN, VINCENT CARRANO, and ANTHONY P. CAVANAUGH willfully and knowingly did make and cause to be made a materially false statement and did over value security by submitting and causing to be submitted an item purporting to be official check No. 1372 of the European Credit Bank Corporation, St. Vincent, British West Indies in the amount of $25,000.00 to the Jefferson Bank and Trust, Denver, Colorado, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank in accepting said check for payment, credit, and as an advance of funds and credit well knowing that said check was false and fraudulent in violation of Title 18, United States Code, Sections 1014 and 2.

COUNT X

The Grand Jury further charges that:

1. From on or about December 30, 1977, and continuously thereafter up to and including the present in the State and District of Colorado, and elsewhere, KEVIN BARRY KROWN, VINCENT CARRANO and ANTHONY P. CAVANAUGH, together with other persons to the Grand Jury known and unknown, not named as defendants herein, willfully and knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money and property and things of value, by means of false and fraudulent pretenses, representations, and promises, from the Jefferson Bank and Trust Company, Lakewood, Colorado, and United Bank of Denver, Denver, Colorado, well knowing at the time that such pretenses, representations, and promises would be and were false and fraudulent when made.

2. It was a part of said scheme and artifice to defraud that KEVIN BARRY KROWN would and did sometimes form, register and otherwise create offshore banks in the British West Indies.

3. It was further a part of said scheme and artifice to defraud that KEVIN BARRY KROWN would and did list and cause to be listed non-existent and inflated assets in the course of forming, registering and otherwise creating offshore banks in the British West Indies.

4. It was further a part of said scheme and artifice to defraud that KEVIN BARRY KROWN would and did form, register and otherwise create the First London Bank and Trust Company, Limited, the First National Bank of Teheran, the European Credit Bank Corporation and the Aeiola Bank and Trust.

5. It was further a part of said scheme and artifice to defraud that defendants printed and caused to be printed bank instruments purporting to be and including, but not limited to letters of credit, cashier's checks, certified checks and official checks (hereinafter sometimes referred to as "checking items") of the banks referred to in paragraph (4) above.

6. It was further a part of said scheme and artifice to defraud that defendants would and did induce and cause to be induced themselves and others to purchase the checking items referred to in paragraph (5) above, when the defendants well knew and should have known that the offshore banks did not have funds as represented by the checking items.

7. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did falsely refer to the purchases mentioned in paragraph (6) as loans.

8. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did present and cause to be presented said checking items referred to in paragraph (5) to the First National Bank of Westminster, the Jefferson Bank and Trust, the First National Bank of Bear Valley and United Bank of Denver and the First National Bank of Denver, for payment, credit and collection, when defendants well knew and should have known that the offshore banks did not have funds as represented by the checking items.

9. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did form a company in Denver, Colorado, First Financial Group, Ltd., to facilitate the fraudulent use of the checking items referred to in paragraph (5).

10. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did utilize a company known as First Group Corporation, its bank account at First National Bank of Denver, to facilitate the fraudulent use of the checking items referred to in paragraph (5).

11. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did induce clients and persons to deposit checking items referred to in paragraph (5) into their personal and business bank accounts.

12. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did instruct clients and other persons to withdraw the funds created by the deposits referred to in paragraph (11) and obtain and write checks on their accounts and withdraw cash therefrom as directed by defendants and other persons not named as defendants herein.

13. It was further a part of said scheme and artifice to defraud that as some of the checks referred to in paragraph (12) were deposited in First Financial Investment Group, Ltd., accounts at Jefferson Bank and Trust, defendants and other persons not named as defendants herein, would and did withdraw and cause to be withdrawn monies thereon.

14. It was further a part of said scheme and artifice to defraud that defendants caused banks receiving the checking items referred to in paragraph (5) to mail and otherwise process for payment credit and collection to the offshore banks created or utilized by defendant KEVIN BARRY KROWN knowing that the items would not be honored when initially presented.

15. It was further a part of said scheme and artifice to defraud that defendants would and did stall and delay the collection process referred to in paragraph (14) by various means and methods.

16. On or about June 7, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so KEVIN BARRY KROWN, VINCENT CARRANO, ANTHONY CAVANAUGH, and others caused to be placed in an authorized depository for mail matter at Denver, Colorado, by the United Bank of Denver, a collection notice and a check dated May 28, 1979, Number 1429 called an "Official Check" drawn on the European Credit Bank Corporation, St. Vincent, British West Indies, payable to First Financial Investment Group, Ltd., with the remitter shown as First Group Corporation, by depositing and causing to be deposited the check in the Jefferson Bank and Trust. All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XI

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count X of this Indictment, except those contained in Paragraph 16 thereof, and further charges that:

2. On or about June 25, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so, KEVIN BARRY KROWN, VINCENT CARRANO, ANTHONY CAVANAUGH, and others, caused to be placed in an authorized depository for mail matters at Denver, Colorado, by the United Bank of Denver, a collection notice and a check dated June 4, 1979, called an "Official Check", was drawn on the European Credit Bank Corporation, payable to First Financial Investment Group, Ltd., with the remitter shown as First Financial Investment Group, Ltd., Number 1452, in the amount of $25,000.00, by depositing and causing to be deposited the check in the Jefferson Bank and Trust. All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XII

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count X of this Indictment, except those contained in Paragraph 16 thereof, and further charges that:

2. On or about July 3, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so, KEVIN BARRY KROWN, VINCENT CARRANO, ANTHONY CAVANAUGH, and others, caused to be placed in an authorized depository for mail matters at Denver, Colorado, by the United Bank of Denver, a collection notice and an "Official Check" Number 1451, in the amount of $25,000.00, drawn on the European Credit Bank Corporation, dated June 4, 1979, payable to First Financial Investment Group, Ltd., with the remitter shown as First Financial Investment Group, Ltd. by depositing and causing to be deposited the check in the Jefferson Bank and Trust. All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XIII

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count X of this Indictment, except those contained in Paragraph 16 thereof, and further charges that:

2. On or about July 13, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so, KEVIN BARRY KROWN, VINCENT CARRANO, ANTHONY P. CAVANAUGH, and others caused to be placed in an authorized depository for mail matters at Denver, Colorado, by the United Bank of Denver, a collection notice and an "Official Check" Number 1450, in the amount of $25,000.00, drawn on the European Credit Bank Corporation, dated June 4, 1979, payable to First Financial Investment Group, Limited, with the remitter shown as First Financial Investment Group, Limited, by depositing and causing to be deposited the check in the Jefferson Bank and Trust.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XIV

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count X of this Indictment, except those contained in Paragraph 16 thereof, and further charges that:

2. On or about July 19, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so KEVIN BARRY KROWN, VINCENT CARRANO, ANTHONY P. CAVANAUGH, and others caused to be placed in an authorized depository for mail matters at Denver, Colorado, by the United Bank of Denver, a collection notice and an "Official Check" Number 1391, drawn on the European Credit Bank Corporation, dated July 18, 1979, payable to First Financial Investment Group, Limited, with the remitter shown as First Financial Investment Group, Limited,

made payable in the amount of $25,000.00 by depositing and causing to be deposited the check in the Jefferson Bank and Trust.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XV

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count X of this Indictment, except those contained in Paragraph 16 thereof, and further charges that:

2. On or about July 20, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so, KEVIN BARRY KROWN, VINCENT CARRANO, ANTHONY CAVANAUGH, and others caused to be placed in an authorized depository for mail matters at Denver, Colorado, by the United Bank of Denver, a collection notice and an "Official Check" Number 1387, in the amount of $25,000.00, drawn on the European Credit Bank Corporation, dated July 18, 1979, payable to First Financial Investment Group, Limited, with the remitter shown as First Financial Investment Group, Limited, by depositing and causing to be deposited in the Jefferson Bank and Trust.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVI

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count X of this Indictment, except those contained in Paragraph 16 thereof, and further charges that:

2. On or about July 24, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so, KEVIN KROWN, VINCENT CARRANO, ANTHONY CAVANAUGH and others caused to be placed in an authorized depository for mail matters at Denver, Colorado, by the United Bank of Denver, a collection notice and an "Official Check" Number 1375, in the amount of $25,000.00 drawn on the European Credit Bank Corporation, payable to First Financial Investment Group,

Limited, dated July 18, 1979, with the remitter shown as First Financial Investment Group, Limited, by depositing and causing to be deposited in the Jefferson Bank and Trust.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVII

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count X of this Indictment, except those contained in Paragraph 16 thereof, and further charges that:

2. On or about July 26, 1979, for the purpose of a scheme and artifice to defraud, and in attempting to do so, KEVIN BARRY KROWN, VINCENT CARRANO, ANTHONY CAVANAUGH, and others caused to be placed in an authorized depository for mail matters at Denver, Colorado, by the United Bank of Denver, a collection notice and an "Official Check" Number 1372, in the amount of $25,000.00, drawn on the European Credit Bank Corporation, payable to First Financial Investment Group, Limited, with the remitter shown as First Financial Investment Group, Limited, dated July 18, 1979, by depositing and causing to be deposited the check in the Jefferson Bank and Trust.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVIII

The Grand Jury further charges that:

1. From on or about December 30, 1977, and continuously thereafter up to and including the present in the State and District of Colorado, and elsewhere, KEVIN BARRY KROWN, JAMES FEENEY, VINCENT CARRANO, ANTHONY P. CAVANAUGH, and GUY VINCENT, together with other persons

to the Grand Jury known and unknown, not named as defendants herein, willfully and knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money and property and things of value, by means of false and fraudulent pretenses, representations, and promises, from the Jefferson Bank and Trust Company, First National Bank of Denver, First National Bank of Westminster and First National Bank of Bear Valley, well knowing at the time that such pretenses, representations, and promises would be and were false and fraudulent when made.

2. It was a part of said scheme and artifice to defraud that KEVIN BARRY KROWN would and did sometimes form, register and otherwise create off-shore banks in the British West Indies.

3. It was further a part of said scheme and artifice to defraud that KEVIN BARRY KROWN would and did list and cause to be listed non-existent and inflated assets in the course of forming, registering and otherwise creating off-shore banks in the British West Indies.

4. It was further a part of said scheme and artifice to defraud that KEVIN BARRY KROWN would and did form, register, and otherwise create the First London Bank and Trust Company, Limited, the First National Bank of Teheran, the European Credit Bank Corporation and the Aeiola Bank and Trust.

5. It was further a part of said scheme and artifice to defraud that defendants printed and caused to be printed bank instruments purporting to be and including, but not limited to letters of credit, cashier's checks, certified checks and official checks of the banks (hereinafter sometimes referred to as "checking items") referred to in paragraph (4) above.

6. It was further a part of said scheme and artifice to defraud that VINCENT CARRANO, JAMES FEENEY, ANTHONY CAVANAUGH, GUY VINCENT and other persons not named as defendants herein, on various occasions, would and did meet in New York City, New York, and did discuss and exchange checking items referred to in paragraph (5) above.

7. It was further a part of said scheme and artifice to defraud that defendants would and did induce and cause to be induced themselves and others to purchase the checking items referred to in paragraph (5) above, when defendants well knew and should have known that the off-shore banks did not have funds as represented by the checking items.

8. It was further a part of said scheme and artifice to defraud that defendants induced persons desiring to purchase land to be used in the development of a project entitled "Science Fiction Land" in Aurora, Colorado, to purchase checking items referred to in paragraph (5) and to present them for payment, credit and collection.

9. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did falsely refer to the purchases of the checking items mentioned in paragraph (7) as "loans."

10. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did present and cause to be presented said checking items referred to in paragraph (5) to the First National Bank of Westminster, the Jefferson Bank and Trust, the First National Bank of Bear Valley and Western Federal Savings and Loan Corporation for payment, credit and collection when defendants well knew and should have known that the off-shore banks did not have funds as represented by the checking items.

11. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did utilize a post-dated check to falsely indicate that a purchase of checking items referred to in paragraph (7) was actually a loan.

12. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did form a company in Denver, Colorado, First Financial Group, Limited, to facilitate the fraudulent use of the checking items referred to in paragraph (5).

13. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did utilize a company known as First Group Corporation, its bank account at First National Bank of Denver, to facilitate the fraudulent use of the checking itmes referred to in paragraph (5).

14. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did induce clients and other persons to deposit checking items referred to in paragraph (5) into their personal and business bank accounts.

15. It was further a part of said scheme and artifice to defraud that defendants and other persons not named as defendants herein, would and did instruct clients and other persons to withdraw the funds created by the deposits referred to in paragraph (14) and obtain and write checks on their accounts and withdraw cash therefrom as directed by defendants and other persons not named as defendants herein.

16. It was further a part of said scheme and artifice to defraud that as some of the checking items referred to in paragraph (15) were deposited in First

Financial Investment Group, Limited, defendants and other persons not named as defendants herein, would and did withdraw monies thereon.

17. It was further a part of said scheme and artifice to defraud that defendants caused banks receiving the checks referred to in paragraph (5) to mail and otherwise process for payment credit and collection to the off-shore banks created by defendant KEVIN BARRY KROWN knowing that the checking items would not be honored when initially presented.

18. It was further a part of said scheme and artifice to defraud that defendants would and did stall and delay the collection process referred to in paragraph (17) by various means and methods.

19. On or about the 11th day of June, 1979, in the State and District of Colorado, KEVIN KROWN, for the purpose of executing the aforesaid scheme and artifice to defraud, and during a conversation with a bank officer of the First National Bank of Westminster, caused to be transmitted sounds by means of a wire communication between a telephone located in Westminster, Colorado, and a telephone located in St. Vincent, British West Indies;

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT XIX

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count XVIII of this Indictment, except those contained in Paragraph 19 thereof, and further charges that:

2. On or about the 18th day of June, 1979, in the State and District of Colorado, KEVIN KROWN, for the purpose of executing the aforesaid scheme and artifice to defraud and

during a conversation with a bank officer of the First National Bank of Westminster, caused to be transmitted sounds by means of a wire communication between a telephone located in Westminster, Colorado, and a telephone located in St. Vincent, British West Indies, all in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT XX

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count XVIII of this Indictment, except those contained in Paragraph 19 thereof, and further charges that:

2. On or about the 19th day of June 1979, in the State and District of Colorado, KEVIN BARRY KROWN, for the purpose of executing the aforesaid scheme and artifice to defraud, and during a conversation with a bank officer of the First National Bank of Westminster caused to be transmitted sounds by means of a wire communication between a telephone located in Westminster, Colorado, and a telephone located in St. Vincent, British West Indies, all in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT XXI

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count XVIII of this Indictment, except those contained in Paragraph 19 thereof, and further charges that:

20. On or about June 19, 1979, KEVIN BARRY KROWN, ANTHONY P. CAVANAUGH, and others, deposited, and caused to be deposited into the savings account of the First American Insulation, also known as First Group Corporation, at the First National Bank of Denver, the following items: (1) an Official check drawn on the European Credit Bank Corporation, Serial Number 1426, made payable to First Group Corporation in the amount of $35,000.00; and (2) an Official check drawn on the European credit Bank Corporation, Serial Number 1431, made payable to First Group Corporation in the amount of $35,000.00.

21. On or about June 20, 1979, KEVIN BARRY KROWN, ANTHONY P. CAVANAUGH, and others wired and caused a wire transfer of $35,100.00 to be made from Denver, Colorado, to

WILLIAM C. SCHLAPMAN at the Barclay's Bank, Nassau, Bahamas, for the purpose of executing the aforesaid scheme and artifice to defraud, in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT XXII

The Grand Jury further charges that:

1. The Grand Jury realleges all of the allegations contained in Count XXI of this Indictment, except those contained in Paragraph 21 thereof, and further charges that:

2. On or about June 20, 1979, KEVIN BARRY KROWN, ANTHONY P. CAVANAUGH, and others wired and caused a wire transfer of $35,100.00 to be made from Barclay's Bank, Nassau, Bahamas, to First National Bank of Westminster for the purpose of executing the aforesaid scheme and artifice to defraud in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT XXIII

The Grand Jury further charges that:

On or about December 20, 1979, in the State of Colorado, KEVIN BARRY KROWN, KAY ROBOHM, EDWARD ALEXANDER, and JAMES FEENEY willfully and knowingly did make and cause to be made a materially false statement and did overvalue a security by submitting and causing to be submitted an item purporting to be a cashier's check No. 3175 of the Aeiola Bank and Trust, St. Vincent, British West Indies made payable in the amount of $135,000.00 and submitted to the Empire Federal Savings and Loan, Denver, Colorado, an institution the deposits of which were then insured by Federal Savings and Loan Insurance Corporation, for the purpose of influencing the action of said institition in accepting said check for payment and credit, as an advance of funds and credit, well knowing that said check was false and fraudulent in violation of Title 18, United States Code, Sections 1014 and 2.

COUNT XXIV

The Grand Jury further charges that:

Between on or about December 1, 1979 and January 1, 1980, KEVIN BARRY KROWN, JAMES FEENEY, KAY ROBOHM and EDWARD ALEXANDER willfully, knowingly and with unlawful and fraudulent intent, did transport and cause to be transported in interstate and foreign commerce from the State of New York and the British West Indies to the State and District of Colorado and elsewhere outside of Colorado a falsely made security, purporting to be a cashier's check, knowing the same to be falsely made, said check being of the tenor and description following to wit:

> Aeiola Bank and Trust, St. Vincent, British West Indies, cashier's check Number 3175 in the amount of $135,000.00,

all in violation of Title 18, United States Code, Sections 2314 and 2.

COUNT XXV

The Grand Jury further charges that:

Between on or about December 1, 1979 and January 1, 1980, KEVIN BARRY KROWN, JAMES FEENEY, KAY ROBOHM and EDWARD ALEXANDER willfully, knowingly and with unlawful and fraudulent intent, did transport and cause to be transported in interstate and foreign commerce from the State of New York and the British West Indies to the State and District of Colorado and elsewhere outside of Colorado a falsely made security, purporting to be a cashier's check, knowing the same to be falsely made, said check being of the tenor and description following, to wit:

> Aeiola Bank and Trust, St. Vincent, British West Indies, cashier's check Number 3226 in the amount of $250,000.00,

all in violation of Title 18, United States Code, Sections 2314 and 2.

A TRUE BILL

James C. [illegible]

Foreman.

JOSEPH DOLAN
United States Attorney

By: CHARLES L. CASTEEL
Assistant U.S. Attorney

By: SUSAN R. ROBERTS
Assistant U. S. Attorney

I [illegible] of the United States District Court for the [illegible] do certify that the [illegible] of [illegible] is a true copy of the original thereof.

Witness my hand and seal this [illegible] day of March 1980

By [illegible]

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C8-9356

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - : INDICTMENT

KEVIN KROWN, a/k/a "Kevin Barry", a/k/a "Barry Crown", a/k/a "J.D. Michaels", a/k/a "William Stillwell", a/k/a "Eric Paul Hilton", : 80 Cr. 673
MAURICE BENJAMIN, a/k/a "Meddy Benjamin", a/k/a "Maurice Bernard", :
JAMES FEENEY, :
HENRY ROSTEN, :
ROGER ROSEN, :
ANTHONY COSTANZO, a/k/a "Tony Costanzo", and :
MARTIN WOLFSON, :

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

COUNTS ONE THROUGH TWENTY-NINE

The Grand Jury charges:

1. From in and around November, 1977 up to and including on or about December 31, 1978, in the Southern District of New York and elsewhere, KEVIN KROWN, a/k/a "Kevin Barry", a/k/a "Barry Crown", a/k/a "J.D. Michael", a/k/a "William Stillwell", a/k/a "Eric Paul Hilton" (hereinafter "KROWN"), MAURICE BENJAMIN, a/k/a "Meddy Benjamin", a/k/a "Maurice Bernard" (hereinafter "BENJAMIN"), JAMES FEENEY (hereinafter "FEENEY"), HENRY ROSTEN (hereinafter "ROSTEN"), ROGER ROSEN (hereinafter "ROSEN"), ANTHONY COSTANZO, a/k/a "Tony Costanzo" (hereinafter "COSTANZO") and MARTIN WOLFSON (hereinafter "WOLFSON"), the defendants, together with others known and unknown to the Grand Jury (hereinafter collectively referred to as "co-schemers"), unlawfully, wilfully and knowingly did devise and intend to

devise a scheme and artifice to defraud and to obtain money and property from the victims more fully identified in paragraph 9 of this Indictment and other such persons and enterprises by means of false and fraudulent pretenses, representations and promises.

Overview of the Fraudulent Scheme

2. The principal object of the fraudulent scheme and artifice set forth in this Indictment was to enrich the defendants and their co-schemers, directly and indirectly, at the expense of the defrauded victims. To this end, the defendants and their co-schemers fraudulently represented that various fraudulent off-shore banks with which they were associated, were substantial and bona fide banks capable of performing all kinds of banking services, including commercial lending, the issuance of legitimate and valuable letters of credit, official checks, certified checks, certificates of deposit and cashiers checks, and the maintenance of personal and corporate checking accounts, when, in fact, as the defendants and their co-schemers well knew, these off-shore banks had no assets and could not perform any such services. These off-shore banks included the First London Bank and Trust Co. ("FLBT"), and the First National Bank of Teheran, S.A.K. ("FNBT") (hereinafter "off-shore banks"). Having created this mirage, the defendants and their co-schemers then employed a number of means designed to enrich themselves at the expense of various victims. One of the principal means was to induce certain victims who were in need of financial assistance to pay them money, namely, "advance fees" or "front money," on the basis of false and fraudulent representations that said off-shore banks would loan them funds as investment capital, or would assist said victims in procuring financing

from other sources. The loans would be in the form of cashiers checks, letters of credit, certificates of deposit, certified checks and official checks issued by the off-shore banks, or checks written on personal or corporate checking accounts which the off-shore banks would allegedly open and maintain in the victim's name (hereinafter collectively referred to as "financial instruments"). Another means employed by the defendants and their co-schemers was to purchase and attempt to purchase goods and services from certain other victims with worthless checks issued by or drawn on the off-shore banks. Yet another means employed by the defendants and their co-schemers was to present and cause to be presented to legitimate domestic banks in the Southern District of New York and elsewhere checks issued by or drawn on the off-shore banks, for payment, deposit, credit and collection, when they well knew that the off-shore banks did not have funds as represented by said checks. The defendants and their co-schemers further falsely represented that the aforementioned financial instruments were worth their face amount and would be honored by the issuing off-shore bank, when in fact, as the defendants and their co-schemers well knew, said financial instruments were worthless and would not be honored by the off-shore banks or by the defendants and their co-schemers.

3. When, thereafter, the victims complained about the dishonoring of said financial instruments, the defendants and their co-schemers continued to lull the victims into a false sense of security by falsely and fraudulently representing and promising, among other things, that the instruments would be honored, when in fact, the defendants and their co-schemers had no intention of so doing.

The Fraudulent Off-Shore Banks

4. At the times relevant to this Indictment, the defendants and their co-schemers devised, conducted and carried out the fraudulent scheme and artifice set forth in this Indictment through the enterprises of the First London Bank and Trust Co. Ltd. and the First National Bank of Teheran, S.A.K., among others. These purported off-shore banks were chartered, incorporated, licensed and created by KROWN and others in St. Vincent, British West Indies. Said "banks" also maintained offices and did business at various addresses in Manhattan in the Southern District of New York, and elsewhere.

5. At the times relevant to this Indictment, the defendants and their co-schemers falsely and fraudulently represented that said off-shore banks had assets of over $250,000,000 and provided a full range of banking services, including medium and short term lending, the maintenance of personal and corporate checking accounts, and the issuance of various financial instruments, including order and bearer cashiers checks, letters of credit and certificates of deposit. The defendants and their co-schemers further falsely and fraudulently represented that said financial instruments would be honored within a certain time period or "float", when in fact, as the defendants and their co-schemers well knew, said financial instruments would never be honored.

The Defendants

6. The principal of the off-shore banks and the prime mover of the fraudulent scheme and artifice devised, conducted and carried out by and through said "banks" and set forth in this Indictment was the defendant KEVIN

KROWN, who, using the names "Barry Crown", "Kevin Krown", "Kevin Barry Krown", "John D. Michaels", "J.[illegible] Michaels", "Eric Paul Hilton" and "William Stillwell", among others, represented himself at various times relevant to the Indictment as the owner, the President, the Managing Director, the Chairman of the Board, the United States representative, the Comptroller, an agent or a customer of said off-shore banks.

7. At the times relevant to this Indictment, the defendant KROWN (defendant in Counts One through Fifty-Five of this Indictment) was aided and abetted and otherwise assisted in devising, advancing, conducting, executing and accomplishing the scheme and artifice set forth in this Indictment by various other individuals, some of whom are named as defendants in this Indictment and more fully described in subparagraphs (a) through (f) below, who wilfully and knowingly joined and participated in such fraudulent scheme and artifice:

a) MAURICE BENJAMIN: from whom KROWN and his co-schemers learned the mechanics of establishing and operating fraudulent off-shore banks, who otherwise assisted in the operation of said "banks", and represented himself as a customer of the First National Bank of Teheran, S.A.K., using worthless checks drawn thereon to purchase goods; named as a defendant in Counts Twenty-Nine, Forty-Three through Forty-Five, Fifty-Three through Fifty-Six of this Indictment;

b) JAMES FEENEY: who represented himself as a broker and finder of the First London Bank and Trust Co., and the First National Bank of Teheran, S.A.K., and as a customer of the First National Bank of Teheran, S.A.K., who introduced persons in need of financial assistance to said

"banks" and sold worthless financial instruments of said "banks" to customers; named as a defendant in Counts Thirteen through Twenty-Eight, Thirty-Nine through Forty-Two, and Fifty through Fifty-Two of this Indictment;

c) HENRY ROSTEN: who represented himself as a finder and broker, introduced persons in need of financial assistance to the First London Bank and Trust Co., and sold worthless financial instruments issued by said "bank"; named as a defendant in Counts Ten through Twelve, Thirty-Seven through Thirty-Eight, and Fifty-Six of this Indictment:

d) ROGER ROSEN: who represented himself as a finder and broker, introduced persons in need of financial assistance to the First London Bank and Trust Co., and sold worthless financial instruments issued by said "bank"; named as a defendant in Counts One through Two, Eight through Nine, Thirty-One, Forty-Nine and Fifty-Six of this Indictment;

e) ANTHONY COSTANZO: who represented himself as a finder and broker and introduced persons in need of financial assistance to the First London Bank and Trust Co., and the First National Bank of Teheran, S.A.K. and otherwise assisted in the operation of said "banks"; named as a defendant in Counts Ten through Seventeen, Twenty-Two through Twenty-Four, Thirty-Seven through Thirty-Nine, and Fifty-Six of this Indictment;

f) MARTIN WOLFSON: who represented himself as a principal in S.I.W. Shoe, Inc., doing business as the Shu-Horn, and through said enterprise purchased and attempted to purchase merchandise with worthless First London Bank and Trust Co. financial instruments and who sold and attempted to sell worthless financial instruments of said "bank"; named as a defendant in Counts Five through Seven, Thirty-Six, Forty-Eight and Fifty-Six of this Indictment.

The Co-Schemers

8. At the times relevant to this Indictment, the defendants were aided, abetted and otherwise assisted in devising, conducting, carrying out and accomplishing the fraudulent scheme and artifice set forth in this Indictment by various other persons and enterprises, both known and unknown to the Grand Jury, collectively referred to in this Indictment as "co-schemers".

The Victims

9. The principal victims of the fraudulent scheme and artifice devised, conducted and carried out by the defendants and their co-schemers set forth in this Indictment included, among others: Citibank (Counts 3-4, 32-35, 46-47), Tim Jagemann and the Bank of Sturgeon Bay (Counts 1-2, 30-31); G & W Sales (Counts 5-7, 36, 48); John Mancini and the First National Bank of Highland (Counts 8-9, 49); Owen C. Murray and the Tennessee Valley Insurance Company (Counts 10-12, 37-38); Marion Talley Ridley (Counts 13-17, 39); Leroy Boehs (Counts 22-24); Frank Vale, Sr. and Furniture Country (Counts 18-21, 40); Phillip Wolitzer and Hoby Hotel & Development Corp. (Counts 25-28, 41-42, 50-52); Joseph Amelar, Inc. (Counts 29, 43-45, 53-55).

Means Used to Carry Out The Fraudulent Scheme and Artifice

10. Among the means which the defendants and their co-schemers would and did employ to effectuate and carry out their fraudulent scheme were the following:

a. Various of the defendants and their co-schemers arranged to be brought in contact with some of the victims named in paragraph 9 of this Indictment and other such victims, who were in need of rapid and substantial financial assistance. These defendants and their co-schemers then

falsely and fraudently represented that the off-shore banks were substantial and legitimate banks, located in St. Vincent, West Indies, engaged in the business of banking and investment, with access to huge sums of money for lending. These defendants and their co-schemers further falsely and fraudulently promised to obtain financing for these victims either from or through the off-shore banks, in that they would (1) issue cashiers checks, official or certified checks to said victims in the amount of the promised loan; (2) open a line of credit at the off- shore banks against which said victims could write checks; or (3) issue certificates of deposit and letters of credit which said victims could then use as collateral to secure their needed loans from legitimate domestic banks and other financial institutions and entities.

b. To obtain such financing and financial instruments, the victims were required to pay fees in advance, referred to as so called "advance fees", "commissions" or "interest fees" (hereinafter "advance fees"). These advance fees, amounting to as much as $50,000 apiece, were paid to these defendants and their co-schemers, at their request, in the form of cash, cashiers checks, readily negotiable checks and bank-to-bank wire transfers. In addition, to lend an aura of legitimacy to the transactions, these defendants and their co-schemers induced many of said victims to execute written agreements with the off-shore banks - called "Applications for Commercial Credit" - and would usually insist that such victims give them so-called "cover checks" in the same amount as the financial instruments issued by the off-shore bank to the victims, which cover checks were purportedly to be held as collateral by the off-shore bank, but in actual fact, as these defendants and their co-schemers well knew, said "cover checks" were worthless.

c. After the agreements had been entered into, the advance fees paid and the "cover checks" exchanged, the defendant KROWN would issue, or cause to be issued by one of his co-schemers, the financial instruments purchased by the victims, which financial instruments falsely, fraudulently and deceptively represented in words or in substance that they were legitimate, bona fide and negotiable instruments. In truth, as these defendants and their co-schemers well knew, these financial instruments were of no value and would never be honored by the off-shore banks.

d. In addition, various other defendants and their co-schemers arranged to be brought in contact with some of the other victims named in paragraph 9 of this Indictment and other such victims, from whom they purchased and attempted to purchase various goods and services which they paid for with worthless checks written on or issued by the off-shore banks.

e. Finally, various other defendants and their co-schemers presented and caused to be presented checks issued by or drawn on the off-shore banks to legitimate, domestic banks in the Southern District of New York and elsewhere, for payment, deposit, credit and collection, which checks they then and there well knew were worthless and would not be honored by the off-shore banks.

f. When confronted with the fact that the off-shore banks were not honoring their financial instruments, and that legitimate banks and financial institutions were refusing to make loans and advance monies based on the financial instruments of the off-shore banks, the defendants and their co-schemers made numerous further false and fraudulent representations and promises to the

victims and others. In some instances, various defendants and their co-schemers demanded, and sometimes received, additional payments from the victims, on false and fraudulent representations and promises that the financial instruments would be honored or they or others would issue substitute financial instruments which would be honored. In particular, the defendants and their co-schemers lulled the victims into a false sense of security by falsely representing that, despite certain unforeseen and unavoidable delays, the financial instruments would nonetheless imminently be honored. Thereafter, when the victims made further demands on the defendants and their co-schemers for payment or the return of their advance fees, the defendants and co-schemers falsely and fraudulently represented, among other things, that the financial instruments would be honored or that the advance fees would be refunded. On other occasions, various defendants and their co-schemers issued and caused to be issued purported refund checks which were later dishonored or returned for insufficient funds.

g. In the end, KROWN, BENJAMIN, FEENEY, ROSTEN, ROSEN, COSTANZO, and WOLFSON, the defendants, and the offshore banks with which they were associated and their co-schemers never delivered any of the promised financial assistance to the victims, or honored any of the financial instruments, and never returned the bulk of the advance fees that they had received, but instead attempted to conceal their fraud by advancing any number of excuses, including falsely claiming that the deals had broken down because of some non-compliance, misrepresentation or failing on the part of the victims or of third parties.

h. As the defendants and their co-schemers well knew, the aforesaid pretenses, representations and promises were in furtherance of a false, fraudulent and intentionally designed confidence scheme to defraud the victims of their advance fees, goods, services, credit and money and that, by these and other such means, the defendants and their co-schemers enriched themselves at the expense of the defrauded victims, advanced the objects of their fraudulent scheme and attempted to conceal their fraud.

Statutory Allegations

11. From in and around November, 1977 up to and including on or about December 31, 1978, in the Southern District of New York and elsewhere, the defendants named and charged as to each count below under the column "DEFENDANTS", together with other co-schemers known and unknown to the Grand Jury, unlawfully, wilfully and knowingly, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property from victims by means of false and fraudulent pretenses, representations and promises set forth in paragraphs 1, 2, 3, 5 and 10 of this Indictment, for the purpose of executing such scheme and artifice and attempting so to do with respect to the particular victim named in each count below under the column "VICTIM", did cause to be transmitted, by means of wire and radio communication in interstate and foreign commerce, certain telegrams, telexes, Faxgrams, Mailgrams, bank to bank wire transfers of funds, Western Union telegraphic money orders, telephone calls, writings, signs, signals, pictures and sounds, all as more particularly set forth as to each count below under the columns "WIRE COMMUNICATIONS" and "APPROXIMATE DATE OF WIRE".

COUNT	DEFENDANTS	VICTIM	WIRE COMMUNICATION	APPROXIMATE DATE OF WIRE
1	ROSEN KROWN	Jagemann	Telephone calls by Jagemann in Wisconsin to KROWN, 275 Madison Avenue, NY, NY.	3/28/78
2	ROSEN KROWN	Jagemann	Telephone calls between Jagemann in Wisconsin and ROSEN, 245 E. 87th St., N.Y., N.Y.	3/78 throug 5/78
3	KROWN	Citibank	Telephone call from Citibank, 700 Columbus Ave., N.Y., N.Y., to FLBT, St. Vincent.	3/13/78
4	KROWN	Citibank	Telephone calls John Fitzgerald, Ass't Manager, Citibank, 700 Columbus Ave., N.Y., N.Y., and FLBT, St. Vincent.	4/78-8/78
5	WOLFSON KROWN	G & W Sales	Telephone call from G & W Sales, 47 W. 34th St., N.Y., N.Y., to FLBT, St. Vincent.	4/18/78
6	WOLFSON KROWN	G & W Sales	Telephone call from FLBT, St. Vincent, to G & W Sales, 47 W. 34th St., N.Y., N.Y.	4/18/78
7	WOLFSON KROWN	G & W Sales	Telex from G & W Sales, 47 W. 34th St., N.Y., N.Y., to FLBT, St. Vincent.	5/4/78
8	ROSEN KROWN	Mancini	Telephone call from First National Bank of Highland, Poughkeepsie, N.Y., to FLBT, St. Vincent.	5/18/78
9	ROSEN KROWN	Mancini	Telephone call from KROWN, St. Vincent, to First National Bank of Highland, Poughkeepsie, N.Y.	5/18/78

COUNT	DEFENDANTS	VICTIM	WIRE COMMUNICATION	APPROXIMATE DATE OF WIRE
10	ROSTEN COSTANZO KROWN	Murray	Telephone call by KROWN, 275 Madison Ave., N.Y., N.Y. to Owen C. Murray in Tennessee.	6/27/78
11	ROSTEN COSTANZO KROWN	Murray	Telephone call by KROWN, 275 Madison Ave., N.Y., N.Y. to Owen C. Murray in Tennesee.	7/10/78
12	ROSTEN COSTANZO KROWN	Murray	Telephone call by KROWN, 275 Madison Ave., N.Y., N.Y., to Owen C. Murray in Tennessee.	7/21/78
13	COSTANZO FEENEY KROWN	Ridley	Series of telephone calls by FEENEY, 270 W. 77th St., N.Y., N.Y., to James Thomson and HiPoint Enterprises in Georgia.	6/30/78- 7/2/78
14	COSTANZO FEENEY KROWN	Ridley	Series of telephone by FEENEY in N.Y.C., N.Y. to Ridley in Tennessee.	Sept. 1978
15	COSTANZO FEENEY KROWN	Ridley	Series of telephone calls by FEENEY in Atlanta, Ga. to KROWN, 360 E. 72nd St., N.Y., N.Y.	9/13/78
16	COSTANZO FEENEY KROWN	Ridley	Series of telephone calls by FEENEY in Oklahoma City, Okla. to KROWN, 360 E. 72nd St., N.Y., N.Y.	9/18/78
17	COSTANZO FEENEY KROWN	Ridley	Series of telephone calls by FEENEY in Pikeville, Tenn. to KROWN, 360 E. 72nd St., N.Y., N.Y.	9/22/78
18	FEENEY KROWN	Vale	Telephone call by Vale in Atlanta, Ga. to FEENEY, 80 Wall St., N.Y., N.Y.	9/5/78
19	FEENEY KROWN	Vale	Telephone calls between Frank Vale, Jr., and FEENEY, N.Y. Hilton, N.Y., N.Y., and Frank Vale, Sr., in Enid, Okla.	9/25/78

COUNT	DEFENDANTS	VICTIM	WIRE COMMUNICATION	APPROXIMATE DATE OF WIRE
20	FEENEY KROWN	Vale	Telephone call by Vale in Enid, Okla. to KROWN, 275 Madison Ave., N.Y., N.Y.	10/6/78
21	FEENEY KROWN	Vale	Telephone calls between James Hutchison, Americana Hotel, N.Y., N.Y. and Vale in Enid, Okla.	10/12/78
22	COSTANZO FEENEY KROWN	Boehs	Wire transfer of $15,000 from Fairview State Bank, Enid, Okla. to FEENEY bank account at Barclays Bank, 300 Park Ave., N.Y., N.Y.	9/26/78
23	COSTANZO FEENEY KROWN	Boehs	Telephone calls by FEENEY, 80 Wall St., N.Y., N.Y., to Boehs in Enid, Okla.	9/26-9/28/78
24	COSTANZO FEENEY KROWN	Boehs	Telephone calls by FEENEY, 80 Wall St., N.Y., N.Y. to the Fairview State Bank, Enid, Okla.	9/26-9/28/78
25	FEENEY KROWN	Wolitzer	Telephone call from Newmark, Lamb, 50 Broad St., N.Y., N.Y. to FNBT, St. Vincent.	10/27/78
26	FEENEY KROWN	Wolitzer	Telephone call from Newmark, Lamb, 50 Broad St., N.Y., N.Y. to FNBT, St. Vincent.	11/6/78
27	FEENEY KROWN	Wolitzer	Telephone call from Newmark, Lamb, 50 Broad St., N.Y., N.Y. to Barclays Bank, St. Vincent.	11/6/78
28	FEENEY KROWN	Wolitzer	Telex from Newmark, Lamb, 50 Broad St., N.Y., N.Y. to Fiorenzo Perucchi, Switzerland.	11/8/78
29	BENJAMIN KROWN	Amelar	Telex from Marine Midland Bank, N.Y., N.Y. to FNBT, St. Vincent regarding FNBT checks for $15,000, $45,000 and $24,919.32.	12/26/78

(Title 18, United States Code, Sections 1343 and 2.)

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COUNTS THIRTY THROUGH FORTY-FIVE

The Grand Jury further charges:

12. Paragraphs 1 through 10 of this Indictment, as set forth above, describing and naming the participants and transactions, the fraudulent scheme, their objects and means, are hereby incorporated by reference and realleged as though fully set forth in Counts Thirty through Forty-Five hereof.

13. From in and around November, 1977 up to and including on or about December 31, 1978, in the Southern District of New York and elsewhere, the defendants named and charged as to each count below under the column "DEFENDANTS", together with other co-schemers known and unknown to the Grand Jury, unlawfully, wilfully and knowingly, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property from various victims by means of false and fraudulent pretenses, representations and promises set forth in paragraphs 1, 2, 3, 5, and 10 of this Indictment, for the purpose of executing such scheme and artifice and attempting so to do with respect to the particular victim or victims named in each count below under the column "VICTIM(S)", did place and cause to be placed certain matter in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service and to be delivered by mail according to the directions thereon, all as more particularly set forth as to each count below under the columns "MATTER IN MAIL" and "APPROXIMATE DATE OF MAILING."

COUNT	DEFENDANTS	VICTIM(S)	MATTER IN MAIL	APPROXIMATE DATE OF MAILING
30	KROWN	Vale Murray Ridley Jagemann	Letter from R.L. Polk & Co., Nashville, Tenn. to "Barry Crown", 360 E. 72nd St. New York, N.Y.	11/21/77
31	ROSEN KROWN	Jagemann	Letter and circular mailed by Jagemann to ROSEN, 245 E. 87th St., NY, NY.	May, 1978
32	KROWN	Citibank	Check collection letter from Citibank, 94th St. and Columbus Ave., NY, NY to FLBT, St. Vincent.	3/28/78
33	KROWN	Citibank	Letter signed by John Fitzgerald, Ass't Manager, Citibank, 700 Columbus Ave., N.Y., N.Y., mailed to FLBT St. Vincent.	6/30/78
34	KROWN	Citibank	Return receipt card mailed from St. Vincent, to Citibank, 700 Columbus Ave., N.Y., N.Y.	7/14/78
35	KROWN	Citibank	Letter signed by John Fitzgerald, Ass't Manager, Citibank, 700 Columbus Ave., N.Y., N.Y., mailed to FLBT, St. Vincent, attention "Barry Crown".	8/16/78
36	WOLFSON KROWN	G & W Sales	Collection Letter IC4-270299 from Marine Midland Bank, NY, NY to FLBT, St. Vincent regarding FLBT Check No. 1145 for $20,000.	4/19/78
37	ROSTEN COSTANZO KROWN	Murray	Envelope, containing documents, mailed by ROSTEN, 51 E. 42nd St., NY, NY. to Murray in Tennessee.	6/26/78

COUNT	DEFENDANTS	VICTIM	WIRE COMMUNICATION	APPROXIMATE DATE OF WIRE
38	ROSTEN COSTANZO KROWN	Murray	Envelope, containing documents, mailed by ROSTEN, 51 E. 42nd St., NY, NY to Jerry Thompson, Trenton, Tennessee.	8/3/78
39	COSTANZO FEENEY KROWN	Ridley	Mailgram from FEENEY, 80 Wall St., NY, NY to Continental Equity, East Point, Georgia.	8/4/78
40	FEENEY KROWN	Vale	Furniture Country Check No. 1155 for $5,000, mailed from Enid, Okla, to FEENEY, 80 Wall St., NY, NY.	9/8/78
41	FEENEY KROWN	Wolitzer	$150,000 certified FNBT Check No. 1255 mailed for collection to Barclays Bank, St. Vincent by Manufacturers Hanover Trust Co., NY, NY.	10/5/78
42	FEENEY KROWN	Wolitzer	Collection letter and certified FNBT Check No. 1256 for $50,000 mailed by Chemical Bank, NY, NY to FNBT, St. Vincent.	10/6/78
43	BENJAMIN KROWN	Amelar	Collection Letter IC 4-281046 from Marine Midland Bank, NY, NY, to FNBT, St. Vincent, regarding FNBT Check No. 1700 for $15,000.	11/28/78
44	BENJAMIN KROWN	Amelar	Collection Letter IC 4-281047 from Marine Midland Bank, Vincent, regarding FNBT Check No. 1095 for $45,000.	11/29/78
45	BENJAMIN KROWN	Amelar	Collection Letter No. IC4-281448 from Marine Midland Bank, NY, NY, to FNBT, St. Vincent, regarding FNBT Check No. 1367 for $24,919.32.	12/7/78

(Title 18, United States Code, Sections 1341 and 2).

COUNTS FORTY-SIX THROUGH FIFTY-FIVE

The Grand Jury further charges:

14. On or about the dates set forth below under the column "APPROXIMATE DATE," in the Southern District of New York, the defendants named and charged as to each count below under the column "DEFENDANTS," together with co-schemers known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did make and cause to be made false statements, and did wilfully overvalue and cause to be overvalued certain properties and securities for the purpose of influencing the action of banks specified below as to each count under the column "BANK," the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon applications, advances, commitments and loans, to wit, the defendants and their co-schemers submitted, caused to be submitted and aided and abetted the submission of various false, fraudulent and worthless financial instruments, specified below as to each count under the column "FINANCIAL INSTRUMENT", for the purpose of obtaining action, all as more particularly set forth as to each count below under the column "ACTION SOUGHT."

COUNT	DEFENDANTS	APPROXIMATE DATE	FINANCIAL INSTRUMENT	BANK	ACTION SOUGHT
46	KROWN	3/13/78	FLBT Cashier's Check No. 1147 for $16,000.	Citibank, 788 Columbus Ave., N.Y., N.Y.	Deposit, cre remittance, lection and payment
47	KROWN	3/16/78	FLBT Cashier's Check No. 1148 for $9,000	Citibank 788 Columbus Ave., N.Y., N.Y.	Deposit, cre remittance, lection and payment.

COUNT	DEFENDANTS	APPROXIMATE DATE	FINANCIAL INSTRUMENT	BANK	ACTION SOUGHT
48	WOLFSON KROWN	4/19/78	FLBT Cashier's check No. 1145 for $20,000	Marine Midland Bank, 140 Broadway, N.Y., N.Y.	Deposit, cred remittance, c lection and payment.
49	ROSEN KROWN	5/17/78	FLBT Letter of Credit No. 25478, for $500,000	First National Bank of Poughkeepsie, N.Y.	Loan
50	FEENEY KROWN	9/27/78	FNBT certified Check No. 1253, for $200,000	Chemical Bank, Branch 116, 640 Madison Avenue, N.Y., N.Y.	Deposit, remi tance, credit collection an payment
51	FEENEY KROWN	10/4/78	FNBT certified Check No. 1256, for $50,000	Chemical Bank, Branch 116, 640 Madison Avenue, N.Y., N.Y.	Deposit, remi tance, credit collection an payment
52	FEENEY KROWN	10/5/78	FNBT certified Check No. 1255, for $150,000	Manufacturers Hanover Trust 60 Broad St. N.Y., N.Y.	Deposit, remi tance, credit collection an payment
53	BENJAMIN KROWN	11/27/78	FNBT certified check No. 1700, for $15,000	Marine Midland Bank, Chambers St., N.Y., N.Y.	Deposit, remi tance, credit collection an payment
54	BENJAMIN KROWN	11/27/78	FNBT certified Check No. 1695, for $45,000	Marine Midland Bank, Chambers St., N.Y., N.Y.	Deposit, remi tance, credit collection an payment
55	BENJAMIN KROWN	12/5/78	FNBT certified Check No. 1367, for $24,919.32	Marine Midland Bank, Chambers St. N.Y., N.Y.	Deposit, remi tance, credit collection an payment

(Title 18, United States Code, Sections 1014 and 2.)

COUNT FIFTY-SIX

The Grand Jury further charges:

15. From in and around November, 1977 up to and including on or about December 31, 1978, in the Southern District of New York and elsewhere, the defendants MAURICE BENJAMIN, HENRY ROSTEN, ROGER ROSEN, ANTHONY COSTANZO and

MARTIN WOLFSON, together with Kevin Krown, James Feeney, Herman Nathan Rosenberg, Robert Della Porte, Larry Heller and David Nemeroff, named in this Count as co-conspirators and not as defendants, and others known and unknown to the Grand Jury (hereinafter collectively referred to as "co-conspirators"), unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, violations of Title 18, United States Code, Sections 1014, 1341, 1342, and 1343.

16. Paragraphs 1 through 14 of this Indictment are hereby incorporated by reference and realleged as though fully set forth herein, as naming and stating the participants in and objects of, and the means by which the defendants named in this Count and their co-conspirators carried out and accomplished this conspiracy.

Statutory Allegations

17. It was a part of this conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would and did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property from various victims by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice and attempting so to do, would and did cause certain mail matter to be placed in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service and to be delivered by mail according to the directions thereon, in violation of Title 18, United States Code, Section 1341; and would and did cause to be transmitted by

means of wire and radio communication in interstate and foreign commerce certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

18. It was further part of this conspiracy that the defendants and their co-conspirators, unlawfully, wilfully, knowingly and for the purpose of conducting, promoting and carrying on by means of the Postal Service the scheme and artifice set forth in this Indictment and other unlawful business, would and did use, assume and request to be addressed by certain fictitious, false and assumed titles and names, other than their own proper names, and under such fictitious, false and assumed titles and names would and did send, take and receive mail matter addressed to such fictitious, false and assumed titles and names, in violation of Title 18, United States Code, Section 1342.

19. It was further a part of this conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would and did make and cause to be made false statements, and would and did wilfully overvalue and cause to be overvalued certain properties and securities for the purpose of influencing the actions of banks the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon applications, advances, commitments and loans, to wit, the defendants and their co-conspirators submitted, caused to be submitted and aided and abetted the submission of various false, fraudulent and worthless financial instruments for the purpose of obtaining credit and loans thereon, in violation of Title 18, United States Code, Section 1014.

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OVERT ACTS

20. (a) Each of the allegations contained in the schedules in the previous counts of this Indictment are hereby incorporated by reference and realleged as though fully set forth herein, as constituting and describing some of the overt acts by which the defendants and their co-conspirators committed, in the Southern District of New York and elsewhere, the offense charged in this Count.

(b) In addition, in furtherance of this conspiracy and to effect its objects, the defendants and their co-conspirators committed the following additional overt acts, among others, in the Southern District of New York and elsewhere:

1. On or about December 30, 1977, co-conspirator Kevin Krown and others not named as defendants herein registered, licensed, chartered, incorporated, and otherwise instituted, and caused to be registered, chartered, incorporated, licensed and otherwise instituted the First London Bank and Trust Company Limited in Kingstown, St. Vincent.

2. On or about January 5, 1978, co-conspirator Kevin Krown met with representatives of the R.L. Polk & Co. in New York City, New York, at which time Krown signed a contract for the publication in "Polk's World Bank Directory" of an advertisement for the First London Bank and Trust Company Limited.

3. On or about January 11, 1978, co-conspirator Kevin Krown, using the name "Barry Crown", opened and caused to be opened a checking account in the name of the First London Bank and Trust Company Limited at Central State Bank, 24 West 48th Street, New York, New York.

4. In or about March, 1978, co-conspirators Heller and Nemeroff met with co-conspirators Nicholas Agostino, Herman Nathan Rosenberg and other co-conspirators not named as defendants herein at the Lexington Hotel in Manhattan.

5. On or about March 13, 1978, co-conspirator Nemeroff was present, together with co-conspirator Herman Nathan Rosenberg, in Citibank, 788 Columbus Avenue, New York, New York for the purpose of cashing a FLBT cashiers check.

6. On or about March 23, 1978, the defendant ROSEN met with Tim Jagemann and co-conspirator Robert Della Porte at JFK Airport.

7. On or about April 12, 1978, co-conspirator Kevin Krown, using the name "Barry Crown", signed a one year lease on behalf of the First London Bank and Trust Company Limited for the rental of the South Penthouse at the Hotel Middletowne, 148 East 48th Street, New York, New York.

8. On or about April 19, 1978, the defendant WOLFSON met with Herbert Gold at the offices of G & W Sales, 47 W. 34th Street, New York, New York and gave him a FLBT cashiers check in payment for merchandise.

9. On or about May 6, 1978, co-conspirator Robert Della Porte met with John Mancini at Madison Avenue and 40th Street, New York, New York in connection with a $500,000 FLBT Letter of Credit.

10. On or about June 7, 1978, the defendants ROSTEN and COSTANZO met with Owen C. Murray at the Roosevelt Hotel, Madison Avenue and 45th Street, New York, New York in connection with a $1,000,000 FLBT Certificate of Deposit.

11. On or about June 9, 1978, co-conspirator Herman Nathan Rosenberg went to LaGuardia Airport.

12. On or about June 9, 1978, at LaGuardia Airport, the defendant COSTANZO was handed $50,000 in cash by Owen C. Murray as payment for a $1,000,000 FLBT Certificate of Deposit.

13. On or about July 3, 1978, co-conspirator James Feeney met with James Thomson at the Roosevelt Hotel, Madison Avenue and 45th Street, New York, New York.

14. On or about July 3, 1978, the defendant COSTANZO met with James Thomson and co-conspirators James Feeney and Kevin Krown at 275 Madison Avenue, New York, New York.

15. During the months of August and September, 1978, co-conspirator James Feeney had several meetings with Frank Vale, Sr. in Atlanta, Georgia in connection with the sale of FLBT cashiers checks.

16. On or about August 22, 1978, co-conspirator Kevin Krown and others not named as defendants herein filed and caused to be filed with the Government of St. Vincent a Special Resolution changing the name of the First London Bank and Trust Company Limited to the First National Bank of Teheran S.A.K. Limited.

17. On or about September 13, 1978, co-conspirator James Feeney met with Leroy Boehs and Marion Talley Ridley in Atlanta, Georgia.

18. On or about September 18, 1978, co-conspirator James Feeney met with Leroy Boehs, Frank Vale, Sr. and Marion Talley Ridley in Oklahoma City, Oklahoma in connection with the sale of FLBT cashiers checks.

19. On or about September 22, 1978, co-conspirator James Feeney met Marion Talley Ridley in Pikeville, Tennessee in connection with the sale of a $335,000 FLBT cashiers check.

20. From on or about September 25, 1978 to and including on or about September 28, 1978, co-conspirator James Feeney had several meetings with Frank Vale, Jr. at the New York Hilton, Avenue of the Americas, New York, New York concerning delivery of an FNBT checkbook.

21. On or about September 29, 1978, co-conspirator Kevin Krown, using the name "Kevin Krown", opened and caused to be opened a checking account on behalf of The First National Bank of Teheran S.A.K. at Chemical Bank, Branch 116, 640 Madison Avenue, New York, New York.

22. On or about October 4, 1978, co-conspirator James Feeney brought two certified FNBT checks to the offices of Goldschmidt, Fredericks, Kurzman & Oshatz, 655 Madison Avenue, New York, New York.

23. On or about October 5, 1978, co-conspirator Kevin Krown, using the name "Kevin Krown," and the defendant BENJAMIN, using the name "Maurice Bernard", opened and caused to be opened a checking account, in the name of Mutual Gold Services of America Limited, at Chemical Bank, 640 Madison Avenue, New York, New York.

24. On or about October 9, 1978, co-conspirator Kevin Krown and others not named as defendants herein filed and caused to be filed with the Government of St. Vincent a Special Resolution naming Stillwell and Dival Company, Limited as Managing Director of the First National Bank of Teheran, S.A.K. Limited.

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25. On or about October 12, 1978, the defendant COSTANZO met at 275 Madison Avenue, New York, New York with Leroy Boehs, Jim Hutchison, Bruce Bonnett, Marion Talley Ridley, Lamar Ridley and co-conspirators James Feeney and Kevin Krown.

26. On or about October 27, 1978, the defendants BENJAMIN and COSTANZO and co-conspirators James Feeney and Kevin Krown met at 275 Madison Avenue, New York, New York with Marion Talley Ridley concerning the refunding of his advance fee payments.

27. On or about November 17, 1978, the defendant COSTANZO and co-conspirators James Feeney and Kevin Krown met with Lamar Ridley at 604 5th Avenue, New York, New York and gave him four checks as purported reimbursement of advance fee payments.

28. In or about December, 1978, the defendants COSTANZO and BENJAMIN, together with co-conspirators Kevin Krown and James Feeney met with Lamar Ridley at 604 5th Avenue, New York, New York concerning the bouncing of the four aforementioned checks.

29. On or about December 29, 1978, the defendant BENJAMIN certified and caused to be certified a $15,000 corporate check at Bankers Trust, New York, New York.

(Title 18, United States Code, Section 371.)

FOREMAN

JOHN S. MARTIN, JR.
United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

vs. : S 80 Cr. 673

KEVIN KROWN, a/k/a "Kevin Barry" a/k/a "Barry Crown" a/k/a "J.D. Michaels," a/k/a "William Stillwell," a/k/a "Eric Paul Hilton," MAURICE BENJAMIN, a/k/a "Meddy Benjamin," a/k/a "Maurice Bernard," JAMES FEENEY, HENRY ROSTEN, ROGER ROSEN, ANTHONY COSTANZO, a/k/a "Tony Costanzo," and MARTIN WOLPSON, :

Defendants. :

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New York, New York
February 2, 1981
10:45 a.m.

B e f o r e:

HON. LEE P. GAGLIARDI,
District Judge

APPEARANCES:

JOHN S. MARTIN, JR., ESQ.,
United States Attorney for the
Southern District of New York
By: CAROLYN H. HENNEMAN, ESQ. and
EDNA WELLS, ESQ.,
Assistant United States Attorneys

MICHAEL ROSEN, ESQ.
Attorney for Defendant Kevin Krown

[Continued]

premature for determination at this particular time and you may renew it.

MR. BOHRER: As I understand it, the Court is continuing leave to the defendant to supplement it as information becomes available.

THE COURT: Yes.

That leaves us with United States against Feeney motions.

MR. LIOTTI: Your Honor, it is my understanding motions were made by my predecessor, Mr. Segal in a timely fashion.

THE COURT: There is a ruling.

MR. LIOTTI: That's right, and I don't except to those motions as your Honor has reserved decision on a great many. However, there is a recent development in Mr. Feeney's case in Colorado which we feel will have a great bearing in his defense here. As of January 21st, 1981, the Tenth Circuit Court of Appeals, in Denver, Colorado, has made a ruling which your Honor has made a ruling which your Honor has a copy of, indicating that Assistant United States Attorney Raymond Levites and an investigator must appear in Denver, Colorado, relative to an application that Defendant Feeney has made, indicating that Defendant Feeney was promised leniency in return for his cooperation in a major

investigation undertaken by the United States Government, and that allegation is made in my papers submitted to your Honor last week. I believe that because of this recent ruling by the Court of Appeals in Denver, Colorado, your Honor, it would be appropriate for the Court to consider our application at this time. We have asked specifically for a severance from this action, your Honor, and that is particularly based on the fact that in the event that Mr. Levites and Mr. Doonan honor the Court's order and testify, it is felt by this defendant that the Assistant Attorney General, Philip Heymann, and the Deputy Attorney General Charles Renfrew will be compelled to testify in the District Court in Colorado and they will testify that Defendant Feeney was offered leniency as a result of cooperation with the United States Government.

THE COURT: The motion papers are completely sufficient. It is information and belief of counsel and they are completely inadequate to call at this time for an evidentiary hearing. The papers submitted in support of the motion, I think, clearly indicate there was no grant of immunity in counsel's opinion to Mr. Feeney but merely—I am reading from page 8 of the opening statement of Mr. Feeney's counsel to the Senate Subcommittee, and to the contrary, they had not promised him immunity. They promised him hope of immunity somewhere along the line that they

(continued on next page.)

deemed him worthy of it. Further on, in the same statement, on page 15, Mr. Feeney never achieved the immunity he sought even in his undercover activities. Clearly counsel has denied the very basis on which you seek to set this fourth in previous matters. The transcript of October 1st, 1980, on page 26, "Is it your information you received from other individuals and the U.S. Attorney's office to indicate there have been any other conversations about a deal for off-shore banking activities, whether they be in New York or Colorado" and the answer was "No."

The papers which you submitted are replete that Mr. Feeney has not been granted immunity or anything else other than the expectation that if he accomplishes something they might do something without any definitive indication thereof. I really think there is absolutely no reason at this time on the basis of what has been submitted to me and the basis actually is to the contrary, there should be an evidentiary hearing and the motion is denied.

MR. LIOTTI: Your Honor, if I may most respectfully except to the Court's ruling. It is the Defendant Feeney's contention he was denied certain Sixth Amendment rights and privileges during the course of his cooperation with the United States Attorney's Office and the FBI over the last several years. Your Honor, it is a fact

that a District Court Judge in Denver, Colorado, has deemed it somewhat significant in a series of post-trial hearings in Denver that it is entirely possible that Defendant Feeney did in fact have a deal with the United States Government in return for leniency.

THE COURT: That goes to the question of mitigation of punishment as I understand it.

MR. LIOTTI: As a matter of fact, your Honor, defendant's counsel in Colorado, Daniel Sears, has made an application for a new trial being considered in Denver. Without opportunity to be heard in an evidentiary hearing, it is impossible for the defendant to develop this theory and to --

THE COURT: No, I deny the application.

MR. ROSEN: Your Honor, one question. I don't see one of the defendants here. Maybe I'm mistaken. Mr. Wolfson?

THE COURT: Mr. Wolfson will not be here.

MR. ROSEN: Would it be inappropriate to ask why?

THE COURT: Mr. Wolfson has pled.

Are you ready to proceed?

MR. ROSEN: One other thing. I don't want your Honor to think I am unappreciative of the accommodations, but since Mr. Krown has stood trial twice now, we have tons

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JAMES W. FEENEY, PETITIONER

vs. No. 82-5228

UNITED STATES OF AMERICA, RESPONDENT

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

REX E. LEE
Solicitor General

AUGUST 19, 1982

cc: THOMAS F. LIOTTI
507 Westbury Avenue
Carle Place, New York 11514
(First-Class Mail)

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DOJ 12-7-76